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BRIEF AND ARGUMENT

OF

HARRY J. CANTWELL (of Crews & Cantwell, Attorneys-at-law, St. Louis, Mo.) TO THE COMMITTEE ON INDIAN AFFAIRS OF THE HOUSE OF REPRESENTATIVES AND TO THE COMMITTEE ON INDIAN AFFAIRS OF THE SENATE ON THE RIGHTS OF ALL PERSONS (EXCEPT THE FORMER SLAVES) TO TRANSFER FROM THE ROLL OF LIMITED RIGHTS, CALLED THE "FREEDMEN ROLL" OF CHOCTAW-CHICKASAW TRIBES TO THE ROLLS OF CITIZENSHIP.—61st Congress, 2d Session. Referring to: H. R. 19279, H. R. 19552, S. 5875.

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K. K. Nov. 10/10

Mr. Chairman and Gentlemen of the Committee :

I appear for a number of persons who are enrolled upon the so-called "Freedmen" rolls of the Choctaw and Chickasaw tribes. The classification of their names upon such rolls limits their rights, under the construction placed upon the Acts of Congress by the Interior Department and by the Dawes Commission "to land equal in value to 40 acres of the average allotable land of the Choctaws and Chickasaw Nations," when it is self-evident that most of the persons so classified were never, and could not have been, "Freedmen of the Choctaw and Chickasaw tribes," but are in fact, and under the laws of the United States and the tribes, full members and citizens of the Choctaw and Chickasaw tribes; and I assert it was the intention of Congress to give these people full and equal rights with other members of the tribe, which intention has been nullified by erroneous construction of the intent of the laws. These people are citizens of the Choctaw-Chickasaw tribes by birth, by the exercise of tribal rights, by having been subject to tribal jurisdiction and by the performance of tribal duties, and many of them it is generally conceded, have actually a preponderance of actual Indian blood. I present to the committee a copy of a memorial lately presented to the President of the United States by J. Milton Turner and Wilbur E. King, together with a letter of the President, transmitting a communication of the Secretary of the Interior replying to the memorial, accompanied by the text of a number of decisions of the Department, and the Attorney General. These decisions refer to the limitation of time in the Act of July 1, 1902, and to the construction of the Department that the "Freedmen roll" is not a roll of citizenship as the bar preventing many

of these people, who are conceded by the Department to be citizens, from being properly enrolled.

I shall attempt to show that an erroneous or fraudulently designed definition of the words "members" or "citizens" was inserted in the Atoka agreement. That this definition in the Atoka agreement was adopted by Congress by the Act of July 1, 1902, inadvertently, without any intention by Congress to thus nullify and destroy the intent of Congress so plainly, before then expressed, and without consideration of the wide and disastrous effect upon the just rights of so many people.

I shall endeavor to show that while the McGuire bill, known as H. R. 19279, or the Barthold bill, H. R. 19552 (which last bill is identical with that introduced by Senator Dick, known as Senate Bill 5875) would all do much to remedy the injustice that has been done some of the people on the Freedmen roll, yet full and complete justice cannot be done in accordance with the intent of Congress and with the underlying principles of humanity, and justice, other than by the transfer from the so-called Freedmen roll of the Choctaw and Chickasaw tribes, to the roll of citizens and members, of the names of all persons on said roll who were not themselves *slaves* at the time of the Treaty of Fort Smith in September, 1865, and by also permitting the transfer to said full citizenship roll of such particular individual slaves who have acquired full membership by marriage since September, 1865, leaving said so-called "Freedmen" roll as, of right and law, it should be:

*A roll only of those persons who were slaves of the Choctaws and Chickasaws in September, 1865, who have not acquired full rights by marriage since.*

And by the enactment of a definition of the word "Freedmen" as used in the acts relating to the Choctaw and Chicka-

saw tribes to include only those individuals *who were themselves held in slavery*.

I suggest these changes in the proposed legislation as being necessary to protect not only the rights of people who have been denied their rights, but as necessary in order to protect the United States Treasury from being unjustly mulcted of over \$600,000.00 as the result of this improper classification (if the word "Freedmen" is continued to be misapplied) as the result of the judgment of the Court of Claims in the case of the United States v. Choctaw Nation et al. (Chickasaw Freedmen case), where it was held that under the reference by Congress to the Court of Claims of the matter in the Act of 1902 and under the treaty, the United States was liable to the Chickasaws for the value of the lands granted "Freedmen," said judgment CONFINING THE WORD FREEDMEN, however, as only to apply to those who were formerly held in slavery, and, improper as I believe the judgment to have been, as made upon an insufficient presentation of all the laws and facts, yet its application will become POSITIVELY FRAUDULENT upon the United States if the Freedmen roll of the Chickasaws is not made what it should be, i. e., *a roll of the former slaves, AND THE OTHERS, NOW IMPROPERLY on said rolls, are not transferred to the roll of citizens or members, where they rightfully belong.*

I call the attention of the Committee, as affecting the expediency of the passage of this bill (as there is no valid argument against it, except that of expediency) to the following facts:

First, every person now on the rolls of the "Full" blood of Choctaw and Chickasaw tribes and every person on the rolls as Choctaw or Chickasaw by marriage, has already received an allotment of 320 acres of land, each, and

it is only the right to further distribution of lands to them, above 320 acres of land already received, which can in any way be affected by Congress, granting to these citizens who have been wrongfully excluded, sufficient of the lands yet remaining to equalize them.

Second, that in addition to the coal and asphalt lands reserved by Congress and the timber reserves, there yet remain in the Choctaw-Chickasaw country more than 1,500,000 acres available for the purposes of allotment to these claimants.

Third, that the greater part of the persons whose distributions (above the 320 acres already received) would be diminished are not, as generally supposed, full blood Indians.

On the approved rolls of "*Full Blood*" Choctaws, appear 16,227 names. Only 6,498 of these names are FULL BLOODS. The remainder have all degrees of Indian Blood from one-half to  $1/128$ . Not one out of 20 of the mixed bloods classified as "FULL" BLOODS has as much as  $1/2$  Indian, there are more with 1-16, 1-32 and 1-64 than there are with  $1/4$  blood. In the new born Choctaw "full bloods" roll out of a total of 1,583, only 345 are really full blood. There is also on the roll of *Choctaws by marriage* who have each and all been given full rights and already 320 acres each, 1,672 persons. Out of a total of 19,482 persons given already 320 acres of land as Choctaw citizens of full blood and by marriage, 6,843 only are really full blood Indians—that is *about one in three*.

On the Chickasaw rolls the same general ratio appears, and some minors being enrolled on "blood" rolls as "A. W."—*all white*.

Now, this distribution has been made upon what theory? Upon what legal theory and what was the consideration

and motive moving Congress to distribute this property to these people? There can only be three:

One was to distribute it in accordance with the provisions of former treaties (although Congress was not bound to regard former treaties) to the "Indian and his descendants." Another was to distribute upon the theory that every human being born to the environment of the tribe, and all those adopted into the tribe, by marriage, by formal act or custom (when the tribal relation was broken up, and the collective right of the tribe to occupancy of the land was gone) were entitled, morally, to equal distribution of that which the tribe had heretofore, collectively claimed or enjoyed.

And the Third:

That those who, by reason of the Indian life and environment had been deprived of the capacity, which other citizens of this Republic possess, to earn a livelihood, should be given a start and the means toward self-maintenance and existence as individuals.

If Congress intended that distribution should be made to the "Indian and his descendants" which is the title originally conferred by the Treaty of 1830, then distribution cannot be denied many of these claimants, for they are as much "descendants" of Indians, as are those of mixed white and Indian blood.

If Congress intended that distribution be made based upon membership in the tribe, then it cannot be denied to those of mixed negro and Indian blood, or those even of full negro blood born in the tribe after slavery was abolished, when these people had enjoyed all of the rights which each member of the tribe had enjoyed to community property.

If Congress intended distribution to be made to the help-

less denizens of the territory in order to prevent them from becoming charges upon public charity upon the theory that they were and are "wards of the Nation," then what class is more deserving, what class is more helpless than the claimants and are not the progeny of the wards of the Nation equally entitled with the wards to the guardians' bounty?

And further:

If Congress intended distribution to be made in compliance with the provisions of the Treaty of 1866, then full distribution cannot be denied to any except those particular individuals who were themselves slaves and had not acquired full rights by marriage since 1866.

Applying either or all of the above motives for distribution upon what grounds can these claimants be excluded?

The statement was made by Mr. Cornish, the attorney for the Choctaw-Chickasaw Indians, in the hearing before the Senate Committee of the 59th Congress, second session (Senate Document 257, at page 251) that "There has not only not been any discrimination, so far as the Choctaws and Chickasaws are concerned, against their slaves, but they have done more for their slaves than is the case in any other southern country."

I say there never was made considering the erroneous impression sought to be created a more palpably false statement than that. The Choctaw-Chickasaws agreed in 1866, to give their *former slaves* 40 acres in area of land. They have actually been given 20 acres within the last 4 years, and the right to purchase at the appraised value 20 acres additional when the regulations for the purchase shall be prescribed by the Secretary of the Interior, *and these regulations are not yet prescribed.* But it is not with the *former "slaves"* that we are concerned. We are concerned with the children of Indian descent, born since slavery, born in

the tribe, to the citizenship of the tribe, who by reason of an admixture of free but negro blood, have been denied their right.

The statement of Mr. Cornish is also repeated in effect in a communication by F. E. Leupp, Commissioner of Indian Affairs, to the Secretary of the Interior under date of January 3, 1907, (See page 122, same document) "The Choctaw and Chickasaw Nations have been far more generous to their former slaves and their descendants than the white people to their ex-slaves. They have allowed them an interest in their lands, which the white slave-owners did not do, and have permitted them to use the lands of the nations for more than 40 years without paying one cent of rent therefor."

It is true that the Choctaw-Chickasaws, before civilization made the lands valuable, did permit the former slaves to occupy as much land as they chose. The former slaves were among the few who had industry enough to cultivate the lands. But we are not seeking to take away from the Choctaw-Chickasaws or the former slave owners of the Choctaw-Chickasaw tribe any of their lands. The Indian, or the Indian-white, under all of the decisions, had no right except the right to occupancy and this he did not fully exercise. Prior to the distribution of these lands in severalty, these people were permitted to occupy the lands of the tribe, they voted in all of the elections, they were eligible to hold any office in the Choctaw Nation, except principal chief, and district chief. There is no test of citizenship which can be applied to them to deny them their rights except the mere arbitrary change of a roll of full rights to a roll of limited rights.

I repeat: The simple enrollment of these people upon the freedman roll established beyond controversy their citizenship, and while if they be former slaves, their rights

under a treaty may be limited to 40 acres; if they be not former slaves, they are entitled to equal distribution of the land under the law. There is not one incident of citizenship except the mere absence of enrollment upon the citizenship rolls (for which they are not to be blamed) that these people have not enjoyed. When lands came to be distributed in severalty, the mixed white-Indian awarded by the bounty of the Government, three hundred and twenty acre apiece and they are most active in attempting to deny to these claimants, citizens of the tribe, where there is no legal limitation upon their right, the right to equal distribution.

Throughout this whole controversy the attempt has been made to compare this demand of the negro-Indian citizen to the demand of the slaves in the south to the land of his former master. There is no parallel in the two cases whatever, and it must be remembered that it is only in the Choctaw and Chickasaw Nations where this discrimination against the negro-Indian appears. The Creek freedmen, has always been recognized as a citizen of the tribe and has been awarded full and equal rights with the Creek Indian to the lands and money of the tribe; so with the Seminoles, and so, eventually, after long litigation, with the Cherokees. There is absolutely no distinction in the distribution of the lands and moneys of the Cherokee Nation between the full blood Indian and the citizen of mixed negro and Indian blood, or the citizen of full negro blood. He who is born in the Cherokee tribe or Creek tribe, or Seminole tribe of a marriage by a bell and book has no greater right than the bastard born to the allegiance of the tribe. The attempted analogy of the claim of the former slave to the land of his former master, to this claim of the negro-Indian, does not exist.



It must be remembered that these lands are public lands, that they are about to be distributed through the bounty of the government alone, to the denizens of a certain territory and the discrimination is made against this large body of citizens born to the allegiance of the tribe and their right to equal distribution is denied for no reason of morals or of the law, but simply because of the distinctions invented, or applied by the Dawes Commission, aided therein by the industry of the attorneys who were paid \$750,000 for the purpose of limiting the number of persons who should be entitled to these benefits. There is only one State in the South which has any great quantity of lands or which has attempted to give to any its citizens public lands. That State is Texas. Since the war, the State of Texas has granted to negro and white alike, to bastard and legitimate the right to take up without price, 160 acres of land if the head of a family, and 80 acres of land if he is a single man. ✓

The swamp lands of the national government that have been donated to the States, have been thrown open to purchase at a low price to all citizens *alike* without any discrimination whatever. Although the old republic of Texas denied the right to persons of African descent to take up the lands after the war and the enactment of a new constitution every person without discrimination, was given an equal right to select a homestead in that State. Art. 4160, Vol. 2, p. 1472, Saylor's Texas Civ. Stat. 1897, is as follows:

“Every person who is the head of a family and without a homestead shall be entitled to receive a donation from the State of Texas of 160 acres of vacant and unappropriated public land, upon the conditions and under the stipulations herein provided.” (Constitution, Art. 14. Sec. 5.)

Note.—The conditions thereafter set out provided that

the method of application shall be by an affidavit, that the applicant is without a homestead and that he has actually settled upon the land he claims."

Article 4161—"Every single man of the age of 18 years or upward, shall be entitled to receive a donation from the State of Texas of 80 acres of vacant and unappropriated public land." (Upon the same conditions.)

If the unoccupied swamp lands of the State of Missouri, or of Mississippi or of Florida, were about to be distributed by those States today to the respective citizens of the State and any one of those States should attempt to discriminate against the citizen born in that State because of his mixture of free, but negro blood, the fourteenth amendment to the Federal Constitution would be and could be successfully invoked, and there would be such a protest raised that it would never be possible to effectuate any such purpose.

And yet under a Republican administration of the National Government which Government and which party has always had a special care for the welfare of the negro, this outrage against the right of the negro-Indian citizen has been perpetrated and the question has become so befuddled by hypercritical distinctions that perfectly sincere and honest men imagine that this is a scheme of the negro-Indian to take away from others their individual rights and appropriate them for himself.

I repeat this is the distribution of national property among the citizens of a particular district. No question of right of private inheritance as an heir has any relevancy. No question of legitimacy of issue is relevant. Even the bastard is born to allegiance and citizenship to its duties and to its rights.

THE INTENT OF CONGRESS WAS TO CONFER  
FULL CITIZENSHIP RIGHTS AND EQUAL DIS-  
TRIBUTION TO THE NEGRO INDIAN.

The right of an individual member of an Indian tribe to property has no relation whatever to our ideas of individualistic ownership of property. The individual owned nothing. He had the right common to all others to the use of property, but he *owned* or had *title*, as we understand the words, to nothing. The conflict between the community idea and the individualistic idea of property was on in the Indian Territory. In 1890 the laws of Arkansas had already been extended over the Indian Territory. The United States was exercising authority to punish many offences, the tribal power and the tribal organizations was being destroyed. The Cherokees, by their tribal organization, attempted to discriminate between the negroes and the other members of the Cherokee tribe in the distribution of proceeds and avails of the lands of the Cherokee tribe which had then arisen and to deny the negroes the right to any share in such funds. Congress, and the Court of Claims enforcing the legislation of Congress, in the case styled *Whitmire, Trustee, Cherokee Freedmen v. Cherokee Nation* (which use of the word "Freedmen" was unfortunate because the rights of all persons of color in the tribe were involved), decided that no distinction was to be made between persons of black color and persons of red color in the distribution of the property owned by the tribe, when it should come to be divided per capita. That case stopped any further attempts at that time to discriminate against the negro member of any of the tribes, although the Creeks and Seminoles had never shown any disposition to discriminate against the black member of those tribes.

When Congress in 1893 and in 1896 passed the several acts hereafter referred to, Congress evidently had in mind this free use of the word "Freedmen" to embrace persons of color. Technically it was never proper to be applied to any but one born slave and made free, but it had been applied in the Cherokee case, and its then application to all persons of color born free or in slavery, was common in the Indian Territory. Congress, by the act of March 3, 1893, declared its purpose to create a State of the American Union out of the Indian Territory. While it used the word "Indian" as the persons to whom allotment was contemplated upon extinguishment of the tribal title, it is certain that members of the Indian tribe was intended, and it is not to be supposed that Congress intended to create a State to be populated by red men who should be the proud possessors of princely incomes derived from tribal property and to inject into such a State an almost as large number of black nomads whose right to use and enjoyment of the tribal lands had been universal and to deprive them of the benefits which would accrue from individual distribution. He surely was an "Indian" if a member of an Indian tribe, and Congress in this expressly declared:

\* \* \* "Neither the provisions of this section nor the negotiations or agreements which may be had or made thereunder shall be held in any way to waive or impair any right of sovereignty which the Government of the United States has over or respecting said Indian Territory, or the people thereof, *or any other right of the Government relating to said Territory, its lands or the people thereof.*"—Sec. 16, Act March 3, 1893 (27 Stat., 645.)

This act was followed by the act of June 10, 1896, which distinctly *conferred* full rights as members and citizens upon

the Freedmen (using the word to designate all living persons of color) in the *Five Civilized Tribes of the Indian Territory*.

The Act of June 10, 1896 (29 Stat. L., 321):

\* \* \* "That said Commission is further authorized and directed to proceed at once to hear and determine the application of all persons who may apply to them for the right of said applicant to be so admitted and enrolled. \* \* \* That in determining all such applications said Commission shall respect all laws of the several nations or tribes, not inconsistent with the laws of the United States, and all treaties with either of said nations or tribes, and shall give due force and effect to the rolls, usages and customs of each of said nations or tribes."

"And the rolls so prepared by them shall be hereafter held to be the true and correct rolls of persons entitled to the *rights of citizenship in said several tribes*. \* \* \* That the said Commission, after the expiration of six months shall cause a complete roll of *citizenship* of each of said nations to be made up from their records and add thereto the *names of citizens whose rights may be conferred under this act*, and said rolls shall be and are hereby *made rolls of citizenship of said nations or tribes*, subject, however, to the determination of the United States courts, as provided herein. The Commission is hereby required to file the *lists of members* as they finally approve them with the Commissioner of Indian Affairs, to remain there for the *use as the final judgment* of the duly constituted authorities. And said Commission shall also make a *roll of freedmen entitled to citizenship in said tribes* and shall include THEIR NAMES IN THE LISTS OF MEMBERS to be filed with the Commissioner of Indian Affairs. \* \* \* It is hereby declared to be the duty of the United States to establish a government in the Indian Territory, which will RECTIFY the many inequalities and discriminations now existing in said Territory."

The Act of 1893 had already declared the purpose of Congress to be the allotment of lands in severalty. The above act is positive and emphatic. The rolls, usages and customs of said tribes were to be applied to the Indian, as to which of the Five Civilized Tribes he should belong, or the adventurous, daring white intruder. *But the right of the Freedmen to enrollment as a member of said tribes* was not, by the act, dependent upon the rolls, usages and customs of the tribes.

The Freedmen's right was confirmed and conferred by the Act of Congress itself independent of the rolls, customs and usages of the tribes (which, it was generally understood, might attempt to discriminate against the negro). The Commission was directed to "make a roll of freedmen entitled to citizenship in said tribes, and shall include their names in the list of *members* to be filed with the Commissioner of Indian Affairs."

And by the last sentence the duty of the United States was declared to establish a government which *will rectify* the many *inequalities* and discriminations now existing in said territory."

"Oh, but," say counsel for the Elect who are now enrolled and have received their principalities, and want the remainder that is still undistributed, "This was but a census roll," "This act did not declare any definite individual rights and did not designate what the allotment of any one should be." We answer it *did*. The Act of 1893 declared the purpose of the Government of the United States to be to distribute to the members of the Indian tribes, and this Act of 1896 declared the status of freedmen (meaning persons of color) in *all* the Five Civilized Tribes to be that of a *member* of said tribes, and it is only in the Choctaw-Chickasaw tribe where the rights then declared have ever been disputed and even in those tribes it was not disputed

after the Acts of 1893, 1896 and 1897, until the subtlety of the lawyers had, as I shall hereafter show, utterly distorted the intent of Congress by a method so simple and yet so effective as to entitle the owner of the cunning brain that devised it to front rank as a master mechanic of *destructive and subversive legislation*.

Congress continued to declare the purpose before expressed and by the Act of June 7, 1897 (30 Stat. L., 83), it was declared—

“And the United States Commissioners in said Territory shall have and exercise the powers and jurisdiction already conferred upon them by existing laws of the United States as respects all persons and property in said territory; and the laws of the *United States* and the State of Arkansas in force in the Territory shall apply to all persons therein, *irrespective of race*, said courts exercising jurisdiction thereof as now conferred upon them in the trial of like causes. \* \* \*

“That said Commission shall continue to exercise all authority heretofore conferred on it by law to negotiate with the Five Tribes, and any agreement made by it with any of said tribes when ratified, shall operate to suspend any provisions of this act if in conflict therewith as to said nation; *provided*, that the words ‘rolls of citizenship’ as used in the Act of June 10, 1896, shall be construed to mean the last authenticated rolls of each tribe which have been approved by the council of the nation, and the descendants of those appearing on such rolls and such ADDITIONAL NAMES AND THEIR DESCENDANTS as have been subsequently added, either by the council of such nation, the duly authorized courts thereof, OR THE COMMISSION UNDER THE ACT OF JUNE 10, 1896. And all other names appearing upon such rolls shall be open to investigation by such Commission.”

Observe the care with which Congress preserved the

rights of the Freedmen (persons of color) in the above Act: "The rolls of citizenship" were to include the last authenticated rolls of the tribes," and the additional names and their descendants \* \* as have been subsequently added" \* \* \* by "the Commission under the Act of June 10, 1896."

What persons were the Commission directed to add to the rolls of membership or citizenship by the Act of June 10, 1896? The "FREEDMEN ENTITLED TO CITIZENSHIP IN SAID TRIBES."

And by the Act of 1897 and the proviso therein the further negotiations with said tribes by the Commission could not vary or disturb the status of the freedmen thus as Congress confidently supposed, fully vested with equal rights as members and citizens of the Five Civilized Tribes.

It is apparent that the Freedmen roll in the Choctaw-Chickasaw tribes, as well as in all other tribes was a *confirmed citizenship* roll up to this *time*. The allotments were not made until years afterwards. The ignorant negro in the Choctaw and Chickasaw tribes little dreamed how easy it would be for artful villainy to steal upon his secure hour and end his rights. Much testimony was taken as to the lack of protest upon the part of the negroes to enrollment upon the "Freedmen roll." Why should he have protested? It was of no consequence to him whether you called him an Indian by blood or a Freedman, so long as his rights were the same. The rolls were to be made descriptive of the other persons because of the increasing claims of the white intruders, but the negro, — why he was *born* there and easily identified, he needed no description of the quantum of Indian blood in *his* veins. It was not made a condition of citizenship that he have any Indian blood. The General Council of the Choctaw Nation was active, however. In a memorial to Congress, October 25, 1898, signed



by Green McCurtain, Principal Chief Choctaw Nation (Act Choctaw Nation, 1898-9), it is recited that the Nation was then in debt \$75,000 incurred by reason of having to defend the Nation against "gross and unjust claims of whites and negroes without a drop of Indian blood, to citizenship," although the poor negro had no money to spend to secure his rights, or to protect and defend them after they were secured. This \$75,000 is no part of the enormous sums thereafter paid to regular and special attorneys which aggregated in all nearly one million dollars.

These attorneys were active, the acts of the Choctaw Nation show that they and the Council were in constant attendance upon the Dawes Commission.

The Act of June 28, 1898, is passed and note that the *purely technical Freedman* that is the word "Freedman," as correctly used in the Treaty of 1866 first, now appears in the Acts of Congress as the "Chickasaw Freedmen":

"The Act of June 28, 1898, provided that when the roll of citizenship of any one of said nations is also completed, the Commission heretofore appointed under Acts of Congress, and known as the 'Dawes Commission,' shall proceed to allot the exclusive use and occupancy of the surface of all the lands of said nation or tribe susceptible of allotment among the citizens thereof, as shown by said roll, giving to each, so far as possible, his fair and equal share thereof, considering the nature and fertility of the soil, location and value of same."

"The Commission is authorized and directed to make correct rolls of the citizens by blood of all the other tribes eliminating from the tribal rolls such names as may have been placed thereon by fraud or without authority of law, enrolling such only as may have lawful right thereto, and their descendants born since such rolls were made, with such intermarried white persons as may be entitled to Choctaw and Chickasaw citizenship under the treaties and the laws of said tribes."

\* \* \* "It shall make a correct *roll of all Choctaw freedmen* ENTITLED TO CITIZENSHIP under the treaties and laws of the Choctaw Nation, and *all their descendants born to them since the date of the treaty.* It shall make a correct roll of *Chickasaw freedmen* entitled to *any rights or benefits* under the treaty made in eighteen hundred and sixty-six between the United States and the Choctaw and Chickasaw tribes and their descendants born to them since the date of said treaty and forty acres of land, including their present residences and improvements, shall be allotted to each, to be selected, held and *used by them until their rights under said treaty shall be determined* in such manner as shall be hereafter provided by Congress."

Congress in this Act of 1898 for the first time used the word Freedmen, relating to the Choctaw and Chickasaw tribes with any qualifying words or in any other sense than as the word was used as applying to persons of color in all the tribes. Note, it did not declare the rights of the Choctaw Freedmen in the above act to be other than rights of full citizenship, but directed a "correct roll of Choctaw freedmen entitled to *citizenship* under the treaties and laws of the Choctaw Nation."

Even these words cannot be construed to destroy the rights of persons enrolled under the act of 1896 and declared by Congress to be entitled to membership independently of the Choctaw laws, but the clause really endangering the rights of the free persons of color and which was the smooth surface of a thin wedge which thereafter by a peculiar construction deprived practically all persons in both the Choctaw and Chickasaw tribes of their full rights as members and citizens was the above clause referring to the "Chickasaw Freedmen entitled to any rights or benefits under the treaty," etc.

Most of the purely technical Freedmen (former slaves)

of the Chickasaw tribes had been denied enrollment on any roll. By the proper construction of the treaty, except that Congress had intended to confer rights upon them, as it undoubtedly did, they were not entitled to full citizenship rights under the treaty. Owing to the activity of those who opposed additions to the roll many of treaty-Chickasaw-freedmen (former slaves) had been excluded from the citizenship Freedmen rolls already made up and it is entirely consistent with the purpose of Congress to assume that Congress intended to include as an addition such particular persons, the technical freedman (former slave), who had been excluded. "His descendants born since the treaty" was an error. His descendants born since the treaty had NO rights under the treaty as a technical treaty Freedman. The word descendants used in the treaty of 1866 applied only to descendants *then living*, which descendants had been held in *slavery*.

I insist that by the Act of 1898, the United States Congress did not intend to place the Chickasaw freedmen, that is, those persons of color born *free* or those who had acquired citizenship by marriage, on anything but a roll of *full* citizenship and in providing for such *additional* roll, the meaning of the word "Chickasaw freedmen" was intended to apply only to such particular individuals who had once been held in slavery, and that the Act of 1898 did not intend to disturb the prior construction that many freedmen of the Chickasaw tribe had been adopted into the tribe and were entitled to full distribution and that all Chickasaw negroes, other than "freedmen" in its technical sense, were thought to have already been included upon the full citizenship roll; "that all lands within the Indian Territory belonging to the Choctaw and Chickasaw Indians shall be allotted to the members of such tribes so as to give to each member of these tribes, so far as possible, a fair and equal share thereof,

considering the character and fertility of the soil and the location and value of the lands. In the clause \* \* \* "all coal and asphalt lands reserved for such tribe, exclusive of freedmen," the words "exclusive of FREEDMEN," was intended to apply solely to the individual who had once been held in slavery. \* \* \* "Provided further, that the Commission shall make a correct roll of Chickasaw freedmen *entitled to any rights or benefits under the treaty of 1866 between the United States and the Chickasaw tribes*" and their descendants born to them since the date of said treaty, and 40 acres of land, including their present lands and improvements shall be allotted to each, to be selected, held and used by them *until their rights* under said treaty shall be determined in such manner as shall hereafter be provided by Act of Congress."

Again, this clause conferred the 40 acres upon the former slave freedom who had NOT become a citizen of the tribe by marriage and was not intended to exclude a man who had been born *in the tribe*, or one who was by marriage or adoption, independent of the particular rights conferred by the Treaty of 1866, entitled to full membership in the tribe. \* \* \* "that the lands allotted to the Chikasaw and Choctaw freedmen are to be deducted from the portion to be allotted under this agreement to the members of the Choctaw and Chickasaw tribes so as to reduce the allotment to the Choctaws and Chickasaws by the value of same. That the said Choctaw and Chickasaw *freedmen* (referring again only to former slaves) who *may be entitled to ALLOTMENT OF FORTY* acres each shall be entitled to land in value of forty acres of the land of the two nations. \* \* \*"

It is further agreed that all of the funds invested in lieu of investment treaty funds or otherwise now held by the United States in trust for the Choctaw and Chickasaw tribes, shall be capitalized within one year after the tribal govern-

ments shall cease, so far as the same may legally be done, and be appropriated and paid by some officer of the United States appointed for the purpose to the Choctaws and Chickasaws (FREEDMEN EXCEPTED) (Note: Meaning the particular individuals who had been slaves) per capita to aid and assist them in improving their homes and lands. (The words "freedmen excepted" being applicable only to those persons of color who had formerly been held in slavery.)

Now, what was done? The Commission under Act of 1898, took the roll which they had formerly prepared of the "Choctaw Freedmen Entitled to Citizenship," to whom full rights had heretofore been awarded BY ACT OF CONGRESS. They took the rolls of the Chickasaw Freedmen, who were enrolled under Act of 1896, *entitled to citizenship*, added to them the children born since the Act of 1896, and returned them all on a roll of *limited rights* entitled only to land equal to *forty acres of average value*.

Communication of the Dawes Commission to the Department of the Interior:

"The 1896 census roll of Choctaw freedmen was used in connection with the enrollment of Choctaw freedmen, but all freedmen who *established* (?) that they were, at any time, slaves of a Choctaw or Chickasaw Indian or descendants of such slaves, were enrolled without reference to the question of whether or not their names appeared on any rolls."

This is a statement as to how the roll of 1898 was made up. (Senate Document No. 505, 60th Congress).s

The Act of 1898 used the word freedmen in its technical sense as "one formerly a slave, but made free." Is it possible that Congress by conferring, in the Act of 1898, *limited rights* upon the persons called *Freedmen in the Treaty of*

1866, intended to destroy the *full rights theretofore* given to *persons of color born free* which is undoubtedly the sense in which Congress used the words "Freedmen" in the Act of 1896?

The work of nullifying the intent of Congress so clearly expressed by former acts was not effectuated by the Act of 1898. The finishing touches to the rights of the free persons of color called "freedmen" in the Act of 1896 was by an agreement between the representatives of the Choctaw and Chickasaw tribes (although the tribal organization was then practically without any of the power of government) and the Dawes Commission, which adopted certain definitions, one of which was:

"Sec. 3. The words members or members and citizen or citizens shall be used to mean members or citizens of the Choctaw or Chickasaw tribe of Indians in Indian Territory, *not including freedmen.*"—(Definitions, in Atoka agreement adopted by Act of Congress, July, 1902.)

Now, this definition was not radically improper except that under the word "Freedmen" had been formerly included a number of persons who were *not, technically, freedmen*. Congress having used it in a double sense it was necessary in order that justice be done that if you are to have a special definition of the word *member* or *citizen* of the *Choctaws and Chickasaws* differing from the meaning of the word *member* or *citizens* as used with reference to the *other tribes* then you must have the different definition of the word "Freedmen" as used in the Choctaw and Chickasaw tribe with reference to the *slave freedmen* described in the Treaty of 1866, the rights of such *slave freedmen* being entirely different from those conferred by the use of the word "Freedmen" as CITIZENS OF COLOR, which is the sense

in which the word had been used in former Acts of Congress, with reference to ALL *the Five Civilized Tribes*, including the CHOCTAW-CHICKASAW.

In the enactment of the legislation of 1898 Congress, with respect to the Five Civilized Tribes, then relied to some extent upon the Interior Department, the Interior Department relied then upon the Dawes Commission. This Dawes Commission had begun its existence by violating the spirit of the Act of 1871 and by treating with the Choctaw-Chickasaw tribe as if it were a foreign nation instead of a dissolving shadowy organization of no more real political potency than the Order of the Colonial Wars. The Dawes Commission, of course, was naturally effected by this constant positive insistence upon "solemn treaty rights" by the attorney for the Choctaws and Chickasaws. That the *enrolled elect* of the Choctaw-Chickasaws gradually began to see their rights, not in the light of grateful recipients of the bounty of a great government, but as exclusive inheritors of the earth who were being robbed by negroes of their patrimony, is apparent. They certainly got the Interior Department and the Dawes Commission, convinced that the former Acts of 1893, 1896 and 1897 had violated their rights by ordering equal distribution and upon the recommendation of the Dawes Commission the Act of 1902 was passed by Congress. The Act of 1902, so far as refers to Choctaws and Chickasaws was practically all written by the attorneys for the Choctaw-Chickasaw Enrolled Elects. The Act of 1902 is an adoption of the Atoka agreement in which the United States as a contracting party was as little a factor as if the Choctaw-Chickasaw organization were the victorious Iroquois from which they sprang, and the United States the vanquished foe; and the negro whose rights were destroyed by the Atoka agreement had as little chance for protection as if he had been bound to a

stake and was surrounded by the dancing Iroquois preparing for his final extinction.

The acts of the General Council of the Choctaw Nation, which Nation existed solely for the purpose of controlling and monopolizing these funds, and the testimony before the Select Committee, show their activities. Their attorneys, Select Committee shows their activities. Their attorneys, agents and clerks were busy fighting the Mississippi Choctaws and a number even of full bloods in the citizenship court. The negroes who were already enrolled upon the Freedmen roll, they had no need to fight and worry over them. They would dispose of them in a mass and in a block.

Further, they would not only cut these "niggers" down to 40 acres, but they would cut them down to 20 acres (which was done by the average value clause.) The "nigger" former slave had for forty years been cultivating much more than 40 acres each. When the appraisement came to be made up his land was appraised, being in cultivation, at the maximum, \$6.50 per acre. The average in the tribe was \$3.26½ per acre. In order for the nigger to get his improvements, he being allowed only land equal to 40 acres of the average allotable land, the value of his allotment by this 40 acres clause was 40 times \$3.26½ (average value) equal \$130.10. so that if he wanted his improvements he only got 20 acres; that is, 20 times \$6.50, the appraised value of his improved land, but even this bold-faced robbery did not satisfy them. Comes now the crowning infamy, and I have no doubt that these gentlemen who were representing the Choctaws-Chickasaws, by this time had succeeded in persuading themselves that the United States was deliberately robbing THEM, for they had the supreme audacity to secure the insertion in the Act of 1902 of a clause for which they should



be paid by the United States for even this 20 acres awarded to the former slaves.

Having secured an interpretation of the word "Freedman" which considered as enrollment would all be niggers, and an act of legislation which when applied to the Choctaw-Chickasaw would entitle the nigger to only 20 acres of land—land whose value his industry had created one would suppose the Elect and their agents and attorneys would have been satisfied. No, the United States must pay them for their lands because the United States had robbed them by giving anything to the nigger.

The above statements are not imaginative, they have not been testified to by human witnesses before the committee, but the facts as conclusively appear by an examination of the respective acts considered in their natural sequence as if all of the parties to a plot had confessed but it was not a plot. It works like a plot because and solely because here were a lot of bright men working continuously without opposition to the common purpose of destroying the property right of the negro.

The negro former slave had up to this time been occupying all of the land he could cultivate under the rights provided under the treaty of 1866 and many of these negroes had as much as three hundred acres under fence. No one objected—land in the early days was as free as air and water to any man in the tribe willing to cultivate it. The report of the Commission provided to be made by next to last clause of Act of June 10, 1896, relating to excessive holdings of members of the tribe would undoubtedly throw much light on the extent of the industry of the former slave and how he was improving the land by cultivation.

When this idea of the rights of the negro being limited under the Treaty of 1866 was resurrected by the lawyers for the Elect and the Select and the intentional confusion of

the former slave with the negro born free was first attempted to be propagated, those of the younger generation of negroes born in the tribe were much like their full blood Indian brothers of the tribe. They were not as industrious as the former slave. They were not cultivating lands to any greater extent than the Indian was.

Their individual allotments as members of the tribes had not been made and they had no occasion to know and were not informed that their rights were about to be confined and limited to rights which were only limitations upon the rights of slaves.

They were on the Freedmen roll, which to their minds was a roll of full rights. Their complaisance was justified by the former Acts of Congress which gave them full rights. Enact a *limitation* for freedmen, eliminate freedmen from the definition of the words members and citizens, and by this bit of magic their rights are destroyed and they are not notified of the change!

Supplement this, as was done, by an act prohibiting the transfer of any one from the Freedmen roll to the roll of citizenship, unless he had before made application for enrollment on the citizenship roll (when there was formerly no occasion for him to make an application for enrollment on the citizenship roll, for the Freedman roll was itself, prior to this act, a roll of *citizens* and members), add a provision finally closing the rolls, and the rights of the negro and negro Indian are finally foreclosed and ended. All this was done. The Assistant Attorney General, recognizing the great injustice done these people, decided that those of mixed blood were entitled to be enrolled as citizens. He did not go far enough to determine that it was the intention of Congress to give the negro nomad equal rights with the red nomad without regard to the quality of his blood, but he had rendered a decision which would have remedied the in-

justice contemplated had he not been met and his able opinions and earnest efforts to secure justice have been destroyed by this cunning definition of "member" inserted into the Atoka agreement and by the act closing and forbidding transfers. Sec. 4, Art. April 26th, 1906.

The Atoka agreement did not give any allotment of 40 acres to DESCENDANTS of Choctaw-Chickasaw Freedmen (using the word as it was used to express the former slave), Sec. 11, Act of July 1, 1902.

The new legislation to which I now refer was for evident reasons confined to the *Chickasaw* Freedmen. Parenthetically, the Choctaw and Chickasaws were one family occupying common territory and the distinction between them was the same distinction and only the distinction which exist between the children of Smith, male, and Robinson, female, if some of the children should call themselves Smith and some should call themselves Robinson. The distinction had, as shown by all the laws and treaties since 1866, no more distinguishing feature and no more vital effect than the distinction between the individual who joins the "Daughters of the Revolution" and she who joins the Daughters of the Colonial Wars, but if these lawyers were to patch up a claim under which they might raid the United States Treasury, it would not do to make the attempt under a claim of indemnity for "Choctaw" Freedmen or for "Choctaw-Chickasaw Freedmen" for the CHOCTAWS HAD, after a joint council with the *Chickasaws*, admitted 8,534 former slaves to the tribe under the Treaty of 1866 as shown by a roll made in 1883, which roll must be somewhere in the archives of the Interior Department, for it is mentioned on page 6 of Senate Document No. 505, 60th Congress, 1st Session, and as the Choctaw and Chickasaw permitted the members of each tribe to settle interchangeably and there was no separate territory for each, but all was common to all, it might

be held, as it undoubtedly should be held, that the Freedmen, former slaves of its combined family, were all admitted under the treaty of 1866.

No, the suit must be brought for the Chickasaws alone, and Section 36 of the Act of July 1, 1902, provides for it, and under this act it was held—the case is fully set out hereafter and in the appendix—it was held that the United States should compensate the Chickasaws for granting the *former slaves* 40 acres of land because the United States had not removed them after the Chickasaws had refused to allot them 40 acres of land as provided under the Treaty of 1866.

The theory upon which this cause of action was referred and maintained in the Court of Claims is as absolutely preposterous as if Congress would to-day pass an act authorizing the present descendants of the French in what was formerly Louisiana Territory to recover from the United States for lands since given as homesteads to the American-born of German or Irish descent and irresistibly forces one to the conclusion that the philosopher-wit was right when he said “That is *Lazv* which is impudently asserted and stoutly maintained.”

It is of no consequence to the claimants whether the results were caused by error, or accomplished by fraud. The effect is the same. The claimants' rights were destroyed. Congress *was imposed upon*, and the beneficent and humane purposes of Congress were nullified. Will the present Congress right the palpable wrong? That is the material question.

## WHAT WAS THE INTENT OF THE TREATIES?

THE INTENT OF THE TREATIES was *that all members of the tribal community share equally.*

Whatever may have been the exact title of the Choctaw Nation or the Chickasaw tribe under the varying terms of the earlier treaties by which lands were granted, guaranteed, confirmed or set apart to them, it is self-evident that the grants were to *political communities* for the benefit of the inhabitants thereof who were inhabitants by the right of birth, or by acquiescence of the tribe, and not intruders by their own volition. The right, and the duty of Congress, representing the Supreme power of the United States, Sovereign of the Soil, and the most benign and just Sovereign that ever existed on this planet, now that these political communities are extinct, the community property rights individualized, and the entire heterogeneous mass of humanity composing the inhabitants of this area has been clothed with citizenship, to distribute these hitherto worthless but now valuable unoccupied lands of the Indian Territory upon broad principles of common humanity and equal justice, which follows the spirit of the treaties, is undoubted.

Conditions have so wonderfully changed, both as to the lands and the inhabitants, that a reference to the treaties prior to 1866, and even to that treaty affords but little guide, either to the intent of the parties to the treaty or as to what words the parties would have used, could they have foreseen all the changes that have since taken place. The patent issued under the Treaty of 1830 granted certain land to the "Choctaw Nation in fee-simple to them and their descendants to inure to them while they shall exist as a nation and live on it liable to no transfer or alienation, except to the United States or with their (the U. S.) consent."

The Choctaw Nation no longer exists, the Choctaw Nation never lived upon the greater part of it in the sense of occupying or utilizing it, and to attempt to trace the de-

scendants of the original beneficiaries, or parties to that treaty would be a task beside which the counting of the sands of the sea-shore, or the numbering of the stars of the firmament would be an easy one. To say that as "descendants" the person having 1-64 Indian and 63-64 caucasian blood should share, and that he who has  $\frac{1}{2}$  Indian and  $\frac{1}{2}$  free negro blood shall not, violates common sense and law. The distribution cannot be made upon a determination of who are descendants, and Congress has never attempted any such feat. The Treaty of 1855 vested the lands in the members of the "Choctaw and Chickasaw tribes their heirs and successors to be held in common so that each and every member shall have an equal undivided interest in the whole" and Article VII of the Treaty of 1855, clearly recognized the right to membership by birth, when the tribes exempted from the jurisdiction of the tribe all those "who were *not* by birth, adoption or otherwise citizens or members of either the Choctaw or Chickasaw tribes" and by a conclusive presumption from the language used, retained jurisdiction over those who *were* by birth, adoption or otherwise, citizens or members of said tribes. If the lands are to be distributed under the intent of the terms of the Treaty of 1855, clearly all those who by birth, adoption or otherwise are citizens or members at the time the community property is individualized, should equally share, and the language of the Treaty of 1855, as well as the language of the Treaty of 1866 and the language of the Acts of Congress, if intelligently followed (except in so far as the construction of the Act of 1902, nullified this purpose and intent), would all be consistent and would have effected distribution upon the broad ground of equal justice and common humanity.

Coming now to the Treaty of 1866, and the great events which immediately preceded it: The Choctaws and Chicka-

saws were slave holders, as were the Cherokees and the Creeks. The two tribes had removed more than five thousand slaves with them from their former country in Mississippi and Louisiana to the Indian country. Their slaves were not all negroes. They were of all degrees of mixed negro and Indian blood and some with a mixture of the three races, white, Indian and negro. Early in the war of the rebellion, the Choctaws and Chickasaws cast off their allegiance to the United States of America and formed an offensive and defensive alliance with the Confederate States of America. Many of the Choctaws and Chickasaws enlisted in the actual service of the Confederacy and went to the scenes of actual hostilities. Most of the slaves, some through affection for their former masters, some through fear, and many through ignorance as to what the war involved, remained in the Indian country and tended the herds and cultivated the soil for the Indians. Some of the younger slaves ran away from the tribal territory and joined the "Yankee" army.

When the war closed the emancipation proclamation had virtually freed these former slaves. When the Commissioners of the United States were sent by President Lincoln to Fort Smith to negotiate terms of peace with these tribes in 1865, the future of the helpless and dependent human beings of varying degrees of black color were considered as of as great importance to the people of the United States, and their claims upon our sense of humanity and justice were as great, as were the people of red color or the then very few people of red and white color. If the Indian were a nomad, the former slave was the shadow of the nomad. If the free Indian was to be taken care of, his former slave, then to be made free, was also to be taken care of. After several days of discussion a truce was arranged, the intention and purpose of the Executive of the

United States to care for the former slaves, being clearly expressed, positively asserted, and stoutly maintained throughout the negotiations, and finally acceded to. The terms of this truce were not then ratified, but were finally crystallized into the terms of the Treaty of July 10th, 1866. That truce, however, was an unconditional surrender and an agreement by the tribes that "they would in all things recognize the Government of the United States which should exercise exclusive jurisdiction over them." The Treaty of July 10, 1866, clearly shows that it was then the intention of this government to which these two tribes acquiesced, that holding of the land in common should be eventually abolished and that the holding of the land in severalty should be established (Article IX, Treaty of 1866). This holding should be by the "individual members." Every male and female adult and minor, Choctaw and Chickasaw (the words "Choctaw" and "Chickasaw" being used to denote a then and thereafter member of the respective tribes) should be entitled to select 160 acres of land and the remaining lands should be held in their "corporate capacity"—plainly intending in their political capacity.

As to the annuities and funds, they were, by Article XLVII of that Treaty "to be capitalized or converted into money as the case may be and the aggregate amounts thereof belonging to each Nation shall be equally divided and paid per capita to the *Individuals thereof respectively* to aid and assist them in improving their homesteads and increasing or acquiring flocks and herds, and thus encourage them to make proper efforts to maintain successfully the new relations which the holding of their lands in severalty will involve." Provided, nevertheless, that there shall be retained by the United States such sum as the President shall deem sufficient to defray the expenses of the Govern-



ment of said Nations, respectively, together with a judicious system of education.”

All treaties and parts of treaties inconsistent therewith were declared null and void. (Article LI.)

The right to the selection of the land in severalty was by Article XXVI extended “to all persons who have become citizens by adoption or intermarriage of either of said Nations, or who may hereafter become such (Article XXVI). The Superintendent of Indian Affairs was made the Executive of said territory with the title of Governor of the said territory of Oklahoma (Para. 10, Art. VIII) a council was provided to be superseded by a General Assembly.

The particular individuals who had been slaves were provided for by the provision of Article III by giving them in severalty 40 acres each. Slavery was abolished. The children thereafter to be born were to be born free. There was no individual grant to them as there was no individual grant to the children thereafter to be born to the Indian. The disabilities of former slavery no longer existed. There was no special provision necessary for the future born children of the negro race because by all former laws of the tribe, all born in freedom to tribal environment were alike entitled to the community property.

As to the individual FORMER SLAVE a special provision was made by the 3d Article of the Treaty of 1866, as follows:

By 3rd article of the treaty of July 10th, 1866, the Choctaws and Chickasaws ceded to the United States the territory west of 98 degrees west longitude, in consideration of \$300,000, to be held in trust by the United States for said nations “until the legislatures of the Choctaw and Chickasaw nations, respectively, shall have made such laws, rules and regulations as may be necessary to give all the persons

of African descent, resident in the said nations at the date of the treaty of Fort Smith, and their descendants HERETOFORE HELD IN SLAVERY AMONG SAID NATIONS, all the rights, privileges and immunities, including the right of suffrage of citizens of said nations, except in the annuities, moneys and public domain claimed by or belonging to said nations respectively, and also to give to such persons who were residents, as aforesaid, and their descendants, forty acres each of the land of said nations on the same terms as the Choctaws and Chickasaws to be selected on the survey of said land, after the Choctaw and Chickasaw and Kansas Indians have made their selection as herein provided; and immediately upon the enactment of such laws, rules and regulations, the said sum of \$300,000 shall be paid to the said Choctaws and Chickasaws Nations, in the proportion of three-fourths to the former and one-fourth to the latter, less such sum at the rate of \$100 per capita, as shall be sufficient to pay such persons of African descent before referred to, as within 90 days after the passage of such laws, rules and regulations shall elect to remove and actually remove from said nations respectively. And should said laws, rules and regulations not be made by the legislatures of said nations, respectively, within two years from the ratification of this treaty, then the said sum of \$300,000 shall cease to be held in trust for the said Choctaws and Chickasaw Nations and be held for the use and benefit of *such said persons* of African descent as the United States shall remove from the said territory in such manner as the United States shall deem proper, the United States agreeing within 90 days from the expiration of said two years, to remove from said nations all such persons of African descent as may be willing to remove; those removing or returning after having been removed from said nations to have no benefit of said sum of \$300,000 or any part thereof, *but*

*shall be upon the same footing as other citizens of the United States in the said nations."*

And Article IV of said treaty provides:

"The said nations further agree that *all negroes* not otherwise disqualified or disabled, shall be competent witnesses in all civil and criminal suits and proceedings in the Choctaw and Chickasaw courts, any law to the contrary, notwithstanding, and they fully recognize the right of the freedman to a fair remuneration on reasonable and equitable contracts for their labor which the law should aid them to enforce. And they agree on the part of their respective nations, *that all laws shall be equal in their operation upon Choctaws, Chickasaws and negroes, and that no discrimination affecting the latter shall at any time be made, and that they shall be treated with kindness and be protected against injury, and they further agree that while the said freedmen now in the Choctaw and Chickasaw nations, remain in said nations respectively, they shall be entitled to as much land as they may cultivate for the support of themselves and families, in cases where they do not support themselves and families by hiring, not interfering with existing improvements without the consent of the occupant, it being understood that in the event of the making of the laws, rules and regulations aforesaid, the forty acres aforesaid shall stand in place of the land cultivated as aforesaid."*

Note.—The word "freedman" is used in this treaty and the word "negro" is used. They were not used interchangeably. The word "freedman" described the individual person who had himself been a slave, but had been freed by the emancipation proclamation and by the treaty.

Slavery was abolished. The persons thereafter born were born in freedom. They could not be "freedmen" because never slaves. Some of the privileges and the disabilities of the above treaty were limited to the class of individ-

uals of African descent who were living in the nations at the date of the treaty of Fort Smith and their then descendants (wherever their then descendants were then living) *heretofore held in slavery among said nations*. Those former slaves residing in the nation in 1865, and their then descendants who were then residing elsewhere, *also former slaves*, had the right to the 40 acres of land. It was *to them*, and *to them alone*, that the 40 acres was given, and upon whom but limited rights were accorded.

The negroes thereafter born free and those who should afterwards be born of unions between Indians and negroes, what about them? There is not one word in that treaty limiting their rights!

On the contrary, there is an express prohibition against any *abridgment* of their rights. \* \* \*

“And they agree on the part of their respective nations that all laws be equal in their operation upon Choctaws, Chickasaws and NEGROES, and that no discrimination affecting the latter shall at any time be made.” How could a Choctaw or Chickasaw thereafter to be born be given a share of community property by law if they should deny it to the negro thereafter born, without violating this treaty?

And by Article 26:

“The rights here given the Choctaws and Chickasaws respectively, shall extend TO ALL PERSONS who have become citizens by adoption or *intermarriage* of either of said nations or *who may hereafter become such*.

No law of the Choctaws or Chickasaws thereafter adopted could deprive the free negroes of the right to intermarry into the tribe, and no law of the Choctaws or Chickasaws could deprive the children of the union of Indian and negro or the children of full negro blood born in either tribe, of their birthright, and no law ever attempted to deprive the

children of the *adopted* citizen of the birthright of membership.

In both the Choctaw and Chickasaw Nations the former slave, and also the free negroes, immediately proceeded to cultivate as much of the unoccupied lands as they could. There were millions of acres of unoccupied lands. The free negro and the former slave and the free-born children of former slaves intermarried in both tribes, and it is a fact, so generally known, as to require no proof, that more than a majority of the persons who voted in these tribes, and by whose votes the tribal relations were abolished, have negro blood in their veins.

The laws of the Choctaws and the Chickasaws affecting the negro in slavery days, which are still cited by the Department and by the attorneys for the Choctaws and Chickasaws were repealed.

By Act of October 13, 1865, the Choctaw General Council *repealed all former laws abridging rights and privileges and all laws conflicting with laws of the United States.*

How could the Choctaws or Chickasaws by law, custom or usage provide for the disposition and distribution thereafter of community property to those thereafter to be born and deny it to the negro, thereafter to be born, and actually in existence when the distribution takes place without violating Article IV of the Treaty of 1866?

And Congress never intended to, and if any intention to so discriminate can be found to be expressed, Congress was imposed upon.

### THE TRIBAL TITLE TO LANDS.

The rights granted to Indians and to Indian tribes by the conquering people of the United States were the result of

a highly developed concept of justice and of natural rights which had never before manifested itself in any nation in the world. These rights were granted in recognition of the principle stated in the opinion of Justice McLean, of the Supreme Court of the United States, in *Worcester v. Georgia*, 6 Peters (U. S.), S. C. Reports, page 515:

“The abstract right of every section of the human race to a reasonable portion of the soil, by which to acquire the means of subsistence, cannot be controverted, and it is equally clear that the range of nations or tribes which exist in the hunter state, may be restricted.’,  
\* \* \* *“The law of nature which is paramount to all other laws, gives the right to every nation to the enjoyment of a reasonable extent of country, so as to derive the means of subsistence from the soil.”*”

It was by the invocation of this law of nature that the Indian has secured his rights. Shall it be accorded to the Indian race or the mixed white and Indian alone and denied to the helpless black being of the human race? Was it intended by the United States in 1866 to set aside this wide domain, in recognition of this law of nature, to be enjoyed by the Indian or the mixed 1/64 Indian and 63/64 white, and deny it to the children of the patient former slave—the victim of the injustice of Indian and white man? It is inconceivable that the law of nature should run for the 63/64 white and 1/64 Indian and not for the black man. Whatever resemblance the negotiations of the United States with Indian tribes may heretofore have been to treaties with foreign nations, and while the tribes were either roving hostile bands with no property, or hunters and herdsmen with community property, and however the agreement of 1866 may be given the imperialistic title of a treaty, it was called a treaty only because it was negotiated by the Executive Powers of the United States, it is manifest throughout

every line of it that the United States was not dealing as with a foreign nation, but intended thereafter to govern these people by United States statutes and no longer by treaties, and it is further manifest, by the treaty of 1866 that a holding in severalty of the lands and an occupation of 160 acres each should arise eventually—that Individualism should eventually appear, and that Collectivism should disappear.

Since 1871 (Act of March 3, 1871) “no Indian nation of the United States” has been “recognized or acknowledged as an independent nation, tribe or power with whom the United States may contract by treaty.”

“The construction of these acts (of Congress) in respect to the determination of citizenship cannot be successfully assailed on the ground of the impairment or destruction of vested rights. The lands and moneys of these tribes are *public lands* and *public moneys* and are not held in individual ownership and the assertion by any particular applicant that his right therein is so vested as to preclude inquiry into his status involves a contradiction in terms.”—(Cherokee Nation v. Hitchcock, 187 U. S., 294-306; Stephens v. Cherokee Nation, 174 U. S., 445.)

It is evident from all the decisions that there is no constitutional limitation upon Congress to dispose of these lands as it wishes. There is no moral obligation created by the Treaty of 1866 requiring Congress to allot any Choctaw or Chickasaw more than 160 acres of land in severalty. There is a moral obligation created by that treaty to distribute the public domain and the funds equally among the *individuals of the respective nations*. Is the negro born free in the tribe an *individual* of the Choctaw or Chickasaw Nations? Is the mixed-Negro-Indian born free, progeny of Indian and negro, an individual of the Choctaw Nation?

By the laws of the nation can he be denied? By the terms of the treaty can he be excluded? By the laws of Congress was it deliberately intended to exclude him?

In the case of the Delawares (*Cherokee Nation v. ———*, 155 U. S., 190-208), it is said:

“It must be borne in mind that the rights and interest which the native Cherokees had in the reservation and outlet sprang solely from *citizenship in the Cherokee Nation*, and that the grant of equal rights as members of the Cherokee Nation, carried with it the grant of all rights springing from citizenship.”

These lands are lands of the United States. The tribal right of occupancy is gone. Distribution has already been made in severalty, to many individuals of an area double that contemplated by the Treaty of 1866. The right of Congress to distribute the remaining lands and moneys among the members of the former tribe and to determine who are the members of the tribe is absolute and undoubted and the duty of Congress so to do is apparent, and imperative.

MEMBERSHIP IN THE TRIBE AND FULL CITIZENSHIP HAS ALWAYS BEEN ACQUIRED BY BIRTH TO TRIBAL ENVIRONMENT, AND ALL BORN SINCE 1866 IN EITHER TRIBE WHO HAVE EXERCISED THE POLITICAL RIGHTS OF CITIZENS BY PERMISSION OF THE TRIBE ARE CHOCTAWS OR CHICKASAWS BY BIRTH.

Indian scholars say that both the Choctaws and Chickasaws sprang from the same original stock. The language of both was the Choctaw language. The tribes occupied adjoining and overlapping territory in Mississippi and Louisiana. When the tribes were moved to the Indian country they occupied common territory with right of inter-



settlement, and except as to the old annuities even while the community and tribal life existed, there was practically no distinction between the two people and it was only by an artificial distinction, intermarriage being common, that any descendant of the original tribe can be said to be a Choctaw instead of a Chickasaw or a Chickasaw instead of a Choctaw. All born in the Chickasaw settlement were called Chickasaws, that is, all born free, and all born in the Choctaw settlement were born Choctaws. There was an infusion of white blood in both tribes long before they went to the Indian Territory. There was also an infusion of free negro as early as 1830, recognized as members of the tribe in the Treaty of 1830. The Spanish conquerors, the French explorers, and the Portuguese had all left their impress upon the tribe and while ethnologists say that both tribes are descendants of the old Iroquois tribe, the members of the tribe have had so many infusions that the tribal name really only correctly describes one subjected to that particular tribal environment. The words "Choctaw" and Chickasaw used in the Treaty of 1866 are used to describe, not any degree of Indian blood but are used to describe inhabitants of the tribe. The only requisite is that one be subject to the tribe, and the words bear no more relation to the mixture of blood, nor to the ancestry of the individual, than the word "Missourian" would today. Missourian is an inhabitant and native of Missouri. Choctaw is an inhabitant in one born to Choctaw tribal environment. Chickasaw is an inhabitant in, one born to Chickasaw tribal environment, and in both cases may include, beside those *born in the tribe*, those who are by law or custom adopted into the tribe. But enacted law and custom is not necessary to confer citizenship BY BIRTH. "In determining who are Indians the court must resort to the actual communities then existing," so says the Court of Claims in the case of the New York

Indians against the United States (40 Court of Claims Reports, 448). The children of white mothers and Indian fathers affiliated with a tribe and forming part of an Indian community must be reckoned as Indians (same case). "Where Indians leave their own tribe which is in amity, and join a new band which is hostile, the status is of the new band" (so says the United States Supreme Court in 180th Sup. Ct. Reports, 261). The much quoted maxim that "the child follows the status of the mother," has no relation to a mother that is free or to her child that is born free, while the mother is subjected to tribal environment at time of birth, and if the child remains after birth in the tribe. If a Choctaw married a Creek woman and kept her in the Choctaw tribe, and her child was born in the Choctaw tribe and lived and died in the Choctaw tribe, no one would dream of calling that child anything but a Choctaw. Status means "state, condition, position of affairs." The mother's state is "free," "her position of affairs" is, she is subject to the tribal laws and the expression is absolutely meaningless when applied to free persons unless used to identify the birthplace of the child by identifying the then place of residence of the mother. It is impossible for a child to be born at any place other than the place which his mother inhabits at the time of his birth. His father's residence at that time certainly cannot identify his place of birth. If his mother is the inhabitant of a country at the time of his birth, the child is by birth a citizen and member of that country or community. It is true that in highly developed societies, upon the maturity of the child, he may if his father be an alien of the country of the child's birth, have an election to acquire citizenship in the country of his father, but this has no application to the tribal life where the child has grown to maturity and remains with the tribe of his birth. When the Choctaws or the Chickasaws of early days warred with

other tribes of Indians they won wives from other tribes and the woman became Choctaws or Chickasaws as the Sabine maidens became Romans, and the children born of these unions in the Choctaw and Chickasaw tribes became Choctaws and Chickasaws respectively as the children of the Roman and the abducted Sabine maiden or matron became Roman. Much has been said about the injustice of permitting the distribution to bastards as members of the tribe. Of what country is the Indian bastard with an Indian father and a negro mother, a citizen? He is not a citizen of the United States if he were born in the Indian tribe. (*Elk v. Wilkins*, 112 U. S., 94.) If he is not a citizen of the Indian tribe, his condition is certainly deplorable, for he has no country. As said in the appeal of Gibson (154 Mass., 378), while the bastard is so far as private right of inheritance goes, *nulius filius*, yet he is *filius populi*—a child of the people. “A citizen is one born in a country without regard to the political status or condition of his parents. (*MacKay v. Campbell*, 16 Fed. cases, 161; *In re Look Tin Sing*, Fed. Report, 905.) In *Lucas v. United States*, the Supreme Court held, 163 U. S., 616, “the view of the trial judge, therefore seems to have been that a finding of fact that the deceased was a negro established the jurisdiction of the court by reason of a presumption that a negro though found within the Indian Territory, was not a member of the tribe. In so holding, we think the court erred. *If there is any presumption* in such a case, it rather is that a negro found within the Indian Territory associating with the Indians, is a member of the tribe by adoption.” And this was the opinion of the Supreme Court without any evidence as to where the negro was born. All people on the Freedmen Roll who are less than 44 years of age today were actually born free and all were born in the tribe and born to the tribal environment. And there is no law, treaty, rule,

regulation or custom which can deny them membership in the tribe or full right to distribution of community property while it is awarded to full blood Indians born since 1866, without violating the express provisions of the treaty of 1866 which prohibited discrimination against negroes.

THE STATUS OF THE FORMER SLAVE, IN THE CHOCTAW NATION, AFTER THE TREATY OF 1866, FROM 1866 TO 1898, AND THE DISTINCTION BETWEEN HIS LIMITED STATUS AND THE CHILDREN BORN FREE AFTER 1866, as shown by the Treaty of 1866, the constitution and laws of the Choctaw Nation, and the laws of the United States.

The word "Freedman" is used in the Treaty of 1866 in its exact sense to describe the particular individual who had once been a slave. That exact use of the word was followed thereafter in the Choctaw laws. For reasons hereinafter shown while the inchoate rights of the individual former slaves of the Choctaws, and the former slaves of the Chickasaws were alike in the Treaty of 1866, yet the formal action of the two tribal authorities was not thereafter the same, although we contend that by reason of the interchangeable rights and the relation of the two tribes and the informal acts of the Chickasaws, the action of the Choctaws bound them, but if the rights of these former slaves are to be construed to be dependent upon the formal action or non-formal action of both of the tribal authorities (a conclusion against which we protest), the right under the treaty and tribal regulations, of the former slave in each tribe might be different. Assuming that the tribal action can and does affect his right, what were the rights of the individual former slave of the Choctaws after the Treaty of 1866? He was emancipated by the 13th amendment to the United States Constitution and by the Treaty of 1866. He was thereafter to be free. That, at least, is

secure. His status as a citizen was thereafter to be determined upon the theory that he was a human being and not a chattel. The Treaty of 1866 gave him the following rights:

1st. In the event the laws were passed as provided for by the treaty, by the Choctaw Nation, and he elected to remain, he was granted: "All the *rights*, PRIVILEGES and IMMUNITIES, including the right of suffrage, of citizens of such Choctaw Nation, except in the annuities, moneys and public domain of the Nation, and was to be given individually and in severalty 40 acres of land.—(Art. 3, Treaty of 1866.)

2d. He was given the guaranty of Article IV of the Treaty: "that all laws thereafter SHOULD BE EQUAL, IN THEIR OPERATION UPON CHOCTAWS, CHICKASAWS AND NEGROES."

3d. He was given, under the words "all persons," the right to acquire full citizenship by intermarriage, and to thereby acquire the right of full property distribution.—(Art. 26, Treaty.)

Until the laws should be passed and until he had the opportunity of accepting this citizenship in the Choctaw Nation he was to be, by the express terms of the Treaty of 1866, "upon the same footing as other citizens of the United States" (conclusion of Art. 3' of Treaty), and was "to be entitled to as much land as they may cultivate for the support of themselves and families (Art. 4, Treaty.)

4th. He was further protected by the prohibition in the last sentence of Sec. 4 of Art. VIII, of the Treaty. "No law shall be enacted (by the Council) inconsistent with the Constitution of the United States, or the laws of Congress or existing treaty stipulations with the United States, nor shall such COUNCIL legislate upon matters pertaining to the legislative, judicial or other organization, *laws or cus-*

*toms of the several tribes or nations, except as herein provided for."*

The Choctaw Nation adopted the former slave by formal act of the Choctaw Council as hereinafter stated, and immediately upon said adoption the former slave became invested with the full rights of a native Choctaw citizen, except that his individual right to annuities, moneys and public domain was limited to 40 acres. He became invested with the following rights, privileges and immunities secured him by the Choctaw constitution; which, after declaring in its preamble, we "do mutually agree with each other to form ourselves into a free and independent nation, not inconsistent with the Constitution, treaties and laws of the United States." Sec. 1, Art. 1, declares: "that all free men, when they form a social compact, *are equal in right*, and that *no man or set of men* are entitled to exclusive, separate public emoluments or privileges from the community but in consideration of public services." Sec. 21 prohibits the General Council from passing any "bill of attainder, retrospective law or law impairing the obligation of contracts." Sec. 7, Art. 8, confers the suffrage on every free male citizen over eighteen years who has been a citizen of the Nation for six months. Sec. 6, Art. 5, and Sec. 2, Art. 7, provides "no person shall be Principal Chief, Subordinate Chief, Senator or Representative, unless he be a free male citizen of the Choctaw Nation and a lineal descendant of the Choctaw or Chickasaw race (this subsequently modified to make the former slave eligible to all offices except Chief and Principal Chief), and Section 23 declares that any law which may be passed contrary to the provisions of the Constitution shall be null and void."

From 1866 to 1883 the former slave resided in the Choctaw Nation, supposed to be "enjoying the same rights as other citizens of the United States," cultivating the neces-

sary land for his support as provided by the Treaty of 1866, but in fact subject to tribal jurisdiction and exercising all tribal rights during all that time.

In 1883 the Choctaw Council definitely adopted into the tribe (Act of May 21, 1883, Laws of Choctaw Nation, pp. 335-336). See appendix for Act in full, the individual former slaves, and invested such former slaves with all the rights of suffrage, and of citizens of the Choctaw Nation, except in the annuity, moneys and the public domain of the Nation and also declared such individual *former* slave to be entitled to 40 acres of the lands of the Nation upon the same terms as the Choctaws. This 40-acre grant was limited to the individual former slave. His individual right to further lands or monies was limited, but *in all other respects* he became a citizen of the Choctaw Nation. His children, born in the tribe, born free, could not be other than citizens of the Choctaw Nation, and his individual right to acquire, himself, full citizenship rights to further annuities, moneys and full citizenship rights to public domain by becoming a member of the tribe by marriage with an Indian, was not denied by any Choctaw law.

On the contrary, it was expressly recognized by Section 7 of this same Act of May 21, 1883, which provides that intermarriage with such *former slave* citizen shall not *confer citizenship*. This is not a declaration that the former slave cannot acquire full citizenship by marrying a citizen. It is a declaration that he cannot himself confer citizenship upon a *non-citizen* by marrying a *non-citizen*. There is no inhibition on other Indian citizens conferring full citizenship upon the freedman by marriage. Section 8 of the same Act is in the past tense, "all such persons of African descent who *have* become citizens shall be entitled to hold any office of trust or profit in this Nation except the offices of Principal Chief and District Chief. This recognizes that many

had, prior to the Act of adoption of 1883, become citizens by intermarriage. Now what of the children born to this adopted (former slave), male or female, born in the tribe after 1883?

Article IX of the Treaty describes the land as held in common in 1866 by the *members of the said nations*. Now omitting from consideration for a moment the children born of the union of Indian and former slaves, what was the status of the children of former slaves whose parents were adopted by this Act of 1883 and given citizenship in the Choctaw Nation? The children were not citizens of the United States, for they were born in the tribal jurisdiction, of parents who had all the rights of full citizenship in the Choctaw Nation, except that there was a limitation upon the parents' individual right to share in the community property. The child born after 1866 got no forty acres by the Treaty and is not mentioned in the Act of adoption of 1883. Why? For the simple reason that no one ever dreamed that such a child born in the tribe, of parents adopted into the tribe, did not acquire *full citizenship as a birthright*, until the Dawes Commission undertook to reconstruct the laws of God and man, to disregard the tribal law of centuries that he who was born in the tribe and remained with the tribe, was a full member of the tribe without any formal act of adoption, to ignore the facts of history, for which a nation shed its blood and treasure, and enforced the disabilities of slavery upon those born free—and finally succeeded in placing these children upon a roll of limited rights, when neither by the treaty, the laws of the Choctaw nor the laws of the United States, was it ever intended or contemplated that, they, even though of full negro blood (I speak now of the children of the former slave, which former slave had been adopted into the tribe) should be anything less than members of the tribe with all



the rights of citizenship and membership in the tribe. The right of citizenship never *descends* in the legal sense. It is an incident to birth, always and everywhere—in all organized societies of human beings. It may also be acquired by law or by custom but no law, and no custom has ever denied citizenship by birth. *U. S. v. Wong Kim Auk*, 169 U. S. (Sup. Ct.) p. 665.

When the right to hold all offices except chief and Principal Chief was conferred upon these adopted (former slaves) citizens can any one doubt that their children were not understood to be born to full membership in the tribe?

When Congress directed by the Act of 1896 a roll to be made of all the "freedmen" entitled to citizenship in all the tribes and further directed the then Commission to include "their names in the *list of members to be filed* with the Commission of Indian Affairs" and when it further declared it "to be the duty of the United States to establish a government in the Indian Territory, which will rectify the many inequalities and discriminations now existing in said Territory," (Act of June 10th, 1896) what did Congress mean by the use of the word "freedmen"?

A reference to the Cherokee litigation which had just concluded in a full victory for the persons of color explains it. The Cherokees had guaranteed by their treaty after the war to the free negroes, the freedmen and their thereafter descendants, equal rights with native Cherokees.

When the grass money came to be divided the Cherokees construed the treaty to mean political rights, and not proceeds or avails of the public domain and the Cherokee Council passed a law confining the distribution to "*Cherokees by blood.*" Grover Cleveland, then President of the United States in 1888 sent a special message to Congress calling attention to this discrimination against the persons of color and Congress apportioned a part of the money then

to be distributed, to the negroes. Thereafter, an act was passed, Oct., 1890, which permitted the negroes, former slaves and their then descendants residing in the Cherokee Nation and those negroes also who were free, prior to the treaty, to bring suit in the Court of Claims to determine their rights in the Cherokee Nation. That case was styled Whitmire, Trustee, Cherokee Freedmen v. Cherokee Nation and the United States. It had just been decided prior to the enactment of the law of 1896. It determined the rights of all *persons of color* in the Cherokee Nation to be equal to the rights of full blood citizens. It was popularly and generally known as the "Freedmen" case, although the persons concerned included all persons of African descent. The rights of the negroes to full citizenship in the Creek Tribe had never been denied. It is apparent that Congress in the act of 1896 for the first time, used the word "Freedmen" to designate all persons of African descent who either by adoption, intermarriage, or by birth, had acquired citizenship in any and all of the tribes. The word was not confined to the particular former slave of the Choctaw or Chickasaw tribe whose right had been by the treaty limited to 40 acres. Congress was not then concerned with *his* limited right and by the way, it is here to be remarked that even the former slave had not been definitely allotted the 40 acres to which he was entitled, but was at that time (1896) occupying "as much land as he could cultivate."

Enrollment upon a "Freedmen" roll under the act of 1896 was a roll of full citizenship, full membership, full rights, and it was not until 1902 when the negligence or ignorance or artful design of the officers or employees of the Dawes Commission changed this full citizenship roll into a roll of limited rights and then Congress, unintentionally, and not perceiving the wrong done this people, provided that transfers shall not be made unless the application for trans-

fer should be made prior to Dec., 1902, while these ignorant people did not know, and were not informed of the clerical change of their status by the roll being branded as a roll of limited rights.

It may be said that there is no express provision in the Treaty of 1866 or in the Choctaw Constitution or Choctaw laws conferring citizenship rights by birth, upon the children of the former slaves, even though the slave parents were adopted into the tribe as citizens. Granted, but there are some things so self evident and so generally acknowledged by civilized man and even by barbarians that they do not require to be set out in treaties, and one of these is the right of a human being, born free in any organized society, to citizenship by birth.

The right of even the child of the full blood thereafter to be born was not set out, the right of the white-Indian child thereafter to be born was not set out. There was no vested title in any particular individual set out by the treaty of 1866 and there was no denial or limitation upon the right of the free born child of the former slave to full citizenship rights, to annuities, moneys and public domain. The limitation to 40 acres was a limitation upon the individual right *of his slave ancestor only*.

The only individual property rights guaranteed by the Treaty of 1866 were to every Choctaw and Chickasaw (not using the words as meaning full blood Choctaws or full blood Chickasaws, but meaning citizens or members of the tribe (in the same sense that we would now speak of a "Missourian" meaning a citizen of Missouri or a "Pennsylvanian" as a citizen of Pennsylvania), male or female, adult or minor, was to 160 acres to be held in severalty, and these rights were by Article XXVI extended to all persons who "have been citizens by adoption or intermarriage of either of said Nations or who may hereafter become such" and of

course including all who should thereafter be BORN to citizenship before the allotment in severalty should take place or, otherwise, even the *full blood* child thereafter born, would get no rights; and as to the moneys and funds which should arise, Article 4, of the treaty of 1866, provided that after the allotment of lands shall be made in severalty, "all the annuities and funds held in trust by the United States shall be capitalized or converted into money as the case may be, and the aggregate amounts thereof belonging to each nation, shall be equally divided and paid per capita to the INDIVIDUALS THEREOF respectively to aid and assist them in improving their homesteads and increasing and acquiring flocks and herds, and thus encourage them to make proper efforts to maintain successfully the new relations which the holding of these lands in severalty will involve." The child, therefore, of the former slave, was and is undoubtedly an "*individual.*" There is no limitation of blood in the use of the word in that clause of the treaty. The words "Individuals of the respective nations" cannot be distorted to exclude the free born child even though of *full negro* blood. He was a member of the tribe. The definition of "member" adopted by the Atoka agreement does not exclude him. He is not and never was a "Freedman" of the Choctaw tribe, because never a slave. He was a FREEMAN *of the Choctaws and a member and a citizen thereof.*

Over 8,000 of these former slaves were actually adopted into the Choctaw-Chickasaw tribe and enrolled as admitted Freedmen. Probably not over 3,000 of these individuals are still living. They, and they alone, are the technical treaty Freedmen of the Choctaw and Chickasaw tribes (except such of them as acquired full citizenship by marriage). Their children are *native Choctaws* and are entitled to be enrolled as full members of the tribe.

RIGHTS OF THOSE BORN FREE AFTER 1866 IN  
EITHER TRIBE, INCLUDING THE CHICKASAW  
TRIBE.

There is not a single act of the Choctaw Council or the Chickasaw Legislature which can be pointed out which denies or attempts to deny to the child BORN in the tribe of full negro blood or mixed negro and Indian blood since 1866 the right to membership in the tribe.

The Chickasaws permitted the former slaves to occupy and cultivate the lands as provided by treaty. While in 1866 the Chickasaw Legislature passed an act declaring it to be the desire of the Chickasaw Legislature that the United States hold the \$300,000 before referred to, for the benefit of the freedmen, and to remove them from the Nation, and in 1868 similar action was taken; yet in 1873, they passed an act adopting these freedmen (which was never approved by Congress as provided by the act of the legislature, and in 1876 another act was passed, requesting their removal, and in 1885 another act was passed requesting their removal. Yet none of these acts refer to others than the particular individuals who themselves, individually, *had once been slaves*. The act of October 22, 1885, gives this distinction great prominence. Note the expression:

“Freedmen once held as slaves;” note, “left them here among us for a long time recognized *by us as occupying the same status as other United States citizens;*” also the words “freed slaves” in the preamble. The act is as follows:

See act of Chickasaws *October 22, 1885*, in Appendix.

There is absolutely not one word disqualifying even the freedman from acquiring rights by intermarriage, as other citizens of the United States, and there is not one word indicating that the word “freedman” was ever intended or considered to apply to his descendant, who was free-born.

✓ The Chickasaws were attempting to deny to the individual once a slave, the right of even limited citizenship and the ownership of 40 acres, although permitting him to OCCUPY such land as he chose to cultivate and although treating him in accordance with the treaty, as upon "the same footing as other citizens of the United States." Yet the freedman's children or the freedman's children by an Indian by the express provisions of Act II, Sec. 3, of the Chickasaw Constitution, "all free male persons \* \* \* who are *by birth* or adoption members of the Chickasaw tribe" were *citizens*. The right of the freedman to acquire citizenship and full rights by marriage is expressly admitted by the *Act of 1875*.

See act \* \* \* Sept. 25, 1875. Oct. 19th, 1876. Appendix.

✓ The United States never removed these freedmen—individuals who had once been slaves, from the Chickasaw Nation. They continued, under the clause of the treaty of 1866 "while the said freedmen remain in said nations respectively, they shall be entitled to as much land as they may cultivate for the support of themselves and families" and "those remaining shall be upon the same footing as other citizens of the United States." They were there during all of that period with the rights to cultivate the vacant lands and upon the same footing as other citizens of the United States. (193 U. S., 115.) And the Supreme Court of the United States held, when these freedmen attempted to get the benefits of the \$300,000 trust fund, that having remained and the Chickasaws now having allotted them the 40 acres, that they were not entitled to the \$300,000 but were upon the same footing as other citizens of the United States in the Chickasaw tribes. And as other "citizens of the United States" we contend that the slave himself was not *disqualified from acquiring membership* in the tribe by

marriage, particularly when the article 26 of Treaty of 1866 provided:

“The right here given the Choctaws and Chickasaws respectively shall extend to ALL PERSONS who have become citizens by *adoption or intermarriage* of either of said nations, or who *may hereafter become such.*”

The United States or the Choctaws and Chickasaws still have the \$300,000. But from 1866 to now, there was no limitation upon the right of the once individual slave (and no one until recently ever dreamed of declaring that there was any limitation upon *his free born child*) to acquire full membership in the Chickasaw tribes by marriage and his or her children were born to membership in the tribe.

Note the express provision of the Chickasaw Constitution, Section 3, Article 1, declaring the rights of those born members of the tribe and whatever and however the Chickasaws, by their varying policy towards the slaves (adopting them formally in 1873 and withdrawing the adoption later) may have had upon the individual former slaves, the right of children of the former slave, born in the tribal environment and subject to the duties and enjoying all the rights as other members, as all of these people did, cannot be denied.

The acts of the Chickasaw Council regulating marriage and the evidence of marriage which appear in the appendix, are all void. They are in direct conflict with the Act of Congress of August 9, 1888, which provides what evidence of a marriage shall be required of an Indian and a white (Chap. 818, 50th Congress, 1st Session, 25 U. S. Stat., 392), and being general and being void as to evidence of the marriage of a white man is also void as to evidence of marriage of a black man, under the Constitution of the United States.

Note also that a late compiler of the Chickasaw Consti-

tution and laws undertakes to destroy the far-reaching effect of Section 7 of the general provisions of the Chickasaw Constitution by printing the following section:

Sec. 7. "That every white person, who having married an Indian, or who has been adopted by the legislative authorities of said Nation, shall be entitled to all the rights, privileges and immunities guaranteed to them only by the thirty-eighth article of the Treaty of 1866, with the Choctaw-Chickasaw Indians."

This section is actually printed in an edition of the Constitution printed by the Indian Citizen Print, Atoka, I. T., as Section 7 of the Constitution of August 16, 1867, when in fact Section 7 of said Constitution grants "*all persons other than Choctaws*" their rights. See appendix.

When people go to the limit of reprinting Constitutions in order to enforce their contentions there is no limit to the infamy of man!

### THESE CLAIMANTS HAVE NEVER HAD A DAY IN COURT.

The attorneys for the Nation say the rolls should not be opened because all claimants have had their day in court. This sounds well and appears to be something that might appeal to Anglo-Saxon ears if these people were Anglo-Saxons and capable of making an Anglo-Saxon fight, but unfortunately for the statement as to these claimants it hasn't a semblance of truth. The statement is made on the assumption that there has been some court to which these people could have individually appealed and was made in connection with the reference to the "citizenship" court. The committee will recall that the citizenship court was not a court to *determine citizenship or to determine original applications for citizenship*. It was a court created, upon the



representation of the attorneys for the Choctaw Nation, that great injustice had been done the Nation by certain judgments of the United States Court in the territory, with jurisdiction only to RE-TRY the cases which had been favorably decided in favor of certain claimants to enrollment, by the United States courts. It was a court which had power to strike off or retain on the rolls names before then added to the rolls by the United States Court and had no other power. These claimants now before the committee, had not been enrolled by the United States Court. They had been enrolled, on what they supposed was a citizenship roll, by the Commission. Citizenship court was created by Act of July 1, 1902, the same act which subverted and destroyed the rights of these people en masse. That court had no jurisdiction over this class of persons. It was not until November 18, 1905, that the Attorney General of the United States discovered that the limitation in the Act of July 1, 1902, prohibited the Interior Department from making transfers from Freedmen rolls to Full Citizenship rolls. Very few of these people ever thought it was necessary for them to be transferred to a citizenship roll. How can these helpless, ignorant people be presumed to have known of the technicality which destroyed their rights, when the Attorney General's Department had not discovered it until several years after it was enacted, and then the time had gone by for any correction to be made BY ANY COURT BECAUSE OF LACK OF JURISDICTION. No court can ever settle these questions. It is not a question of individual concrete cases; it is not questions of fact which this committee should be called upon to determine. It is absolutely imperative, however, that this committee determine, and determine speedily, the questions of law. The committee will do more to finally settle the affairs of this tribe by careful consideration of the laws already passed, by which they will

be convinced that the purpose of the general legislation has been subverted by cunning distortion of a word here and there; and a few simple enactments to correct these errors and distortions under which new enactment the Department of the Interior may go ahead and determine facts expeditiously, will do more to solve the complicated problem than if Congress should create a dozen courts or a dozen commissions to hear facts. I submit the intent of the treaty and the plain intent of Congress has been subverted by legislation. The subversion must be corrected by legislation. I am inclined to believe, after a careful study of the testimony taken before the respective committees that the Dawes Commission or any member of it, was not guilty of fraud. The injustice and inequalities here complained of is the result of a misconception of the powers and the rights of the purely ornamental tribal organizations and of the mistaken notion which the Indians have conceived that this domain is a matter of their private inheritance and that while they shall individually themselves receive the proceeds of all the lands, with the great increase thereto which civilization has given, *on the theory that they are the living successors of the persons once composing a political community*, they deny that right to others who have equal claims in law and in nature to the same benefit. Add to this consideration, moving a large number of people, the spirit of intolerance against a race formerly held in slavery, and the baleful results followed naturally and inevitably, unless the superintending power of the United States had been constantly and intelligently manifested.

Justice, gentlemen, has been long absent from her throne in the Indian country where the right of a "nigger" was in any way involved. Intolerance, Ignorance, Error, and perhaps, sometimes, Fraud, has usurped and occupied her place. We humbly pray that the blind goddess who weighs true

with her scales, the claims of white, of Indian, of white-Indian, of Indian-negro, and negro-Indian shall now be restored to her judgment seat, and that her reign so auspiciously begun in 1893, and which continued uninterruptedly until 1898, shall again prevail.

## APPENDIX.

Extracts from Constitution and all laws affecting citizens and intermarriage adopted in force in Choctaw Nation between 1866 and 1894.

“FROM CONSTITUTION AND LAWS OF THE CHOCTAW NATION, together with TREATIES of 1837, 1855, 1865 and 1866.

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PUBLISHED BY AUTHORITY OF THE GENERAL COUNCIL, by Durant, and Davis Homer and Ben Watkins, Asst. Compilers.

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1894.”—(Congressional Library.)

## CONSTITUTION.

We, the representatives of the people inhabiting the Choctaw Nation, contained within the following limits, to wit: \* \* \* do ordain and establish the following constitution and form of government, and do mutually agree with each other to form ourselves into a free and independent Nation, not *inconsistent with the Constitution, Treaties and Laws of the United States*, by the name of the Choctaw Nation.

## ARTICLE I.

SECTION I. That all free men, when they form a social

compact, are equal in right, and that no man or set of men *are entitled to exclusive, separate public emolument or privileges from the community*, but in consideration of public services.

SECTION 2. That no free man shall be taken or imprisoned or disseized of his freehold liberties or privileges, or outlawed or exiled, or in any manner destroyed or deprived of his life, liberty, and property, but by the judgment of his peers or the law of the land.

SECTION 21. \* \* \* The general council shall pass no bill of attainder, *retrospective law*, nor law impairing the obligation of contracts.

### ARTICLE III.

SECTION 3. No person shall be a Senator who shall not have attained the age of thirty years and been one year a citizen of this Nation, and who shall not, when elected, be an inhabitant of that district as least six months preceding his election for which he shall be chosen.

### ARTICLE V.

SECTION 6. No person shall be eligible to the office of principal or district chief unless he shall have attained the age of thirty years, and have been an *inhabitant* of the Choctaw Nation at least five years next preceding his election.

### ARTICLE VII.

SECTION 2. No person shall be principal chief, or subordinate chief, senator or representative, unless he be a free male *citizen* of the Choctaw Nation, and a lineal descendant of the Choctaw race.

SECTION 7. EVERY free male citizen of this Nation

who shall have attained to the age of eighteen years, and who shall have been a citizen of the Nation six months, shall be deemed a qualified elector, and shall be entitled to vote in the county or district where he may have been actually resided at least one month preceding the election for each and every office made elective in this Nation.—(Constitution of the Choctaw Nation, pp. 22-23.)

SECTION 23. That all the provisions in the Constitution, now in existence, and not revised or adopted by this *Constitution are hereby* DECLARED null and void; and that any law which may be passed contrary to the provisions herein specified shall be null and void; and all rights and powers not herein granted or expressed shall be reserved unto the people.—(Constitution of the Choctaw Nation, p. 25.)

## LAWS.

### *Intermarriage.*

SECTION I. (1) Be it enacted by the general council of the Choctaw Nation assembled; Any white man, OR CITIZEN OF THE United States or of any foreign government, desiring to marry a Choctaw woman, citizen of the Choctaw Nation, shall be and is hereby required, to obtain a license for the same from one of the circuit clerks or judges, of a court of record, and make oath or satisfactory showing to such clerk or judge, that he has not a surviving wife from whom he has not been lawfully divorced; and unless such information be freely furnished to the satisfaction of the clerk or judge, no license shall issue; and every white man or PERSON applying for a license as provided herein, shall, before obtaining the same, be required to present to the said clerk or judge, a certificate of good moral character, signed by at least ten respectable

Choctaw citizens by blood, who shall have been acquainted with him at least twelve months immediately preceding the signing of such certificate; and before any license, as herein provided, shall be issued, the person applying shall be and is hereby required to pay to the clerks or judge, the sum of twenty-five dollars; and be also required to take the following oath: "I do solemnly swear that I will honor, defend, and submit to the constitution and laws of the Choctaw Nation, and will neither claim nor seek from the United States Government or from the judicial tribunals thereof, any protection privileges, or redress incompatible with the same as guaranteed to the Choctaw Nation by the treaty stipulations entered into between them, so help me God."

Note.—This act not applicable to Freedmen who were adopted under the Act of of May 21, 1883, they, after May 21, 1883, having become citizens of the Choctaw Nation.

2. Marriages contracted under the provisions of this act shall be solemnized as provided by the laws of this Nation or otherwise null and void.

3. No marriage between a citizen of the United States or any foreign nation, and a female citizen of this Nation, entered into within the limits of this Nation, except as hereinbefore authorized and provided, shall be legal, and every person who shall engage and assist in solemnizing such marriage shall upon conviction be fined fifty dollars, and it shall be the duty of the district attorney in whose district such person resides to prosecute such person before the circuit court and one-half of all fines arising under this act shall be equally divided between the sheriff and the district attorney.

4. Every person performing the marriage ceremony under the authority of a license provided for herein shall be required to attach a certificate of marriage to the back

of the license and return it to the person in whose behalf it was issued, who shall within thirty days therefrom, place the same in the hands of the circuit clerk, whose duty it shall be to record the same and return it to the owner.

5. Should any *man or woman, a citizen of the United States or of any foreign country*, become a citizen of the Choctaw Nation by intermarriage, as herein provided, and be left a widow or widower, *he or she shall continue to enjoy the right of citizenship*; unless he or she shall marry a white man or woman, or person as the case may be, having no rights of Choctaw citizenship by blood; in that case his or her rights acquired under the provisions of this act shall cease.

6. Every person who shall lawfully marry, under the provision of this act, and afterwards abandon his wife or her husband, shall forfeit every right of citizenship, and shall be considered an intruder and removed from this Nation, by order of the principal chief. (P. 225 Ibid.)

Approved Oct. 30, 1888.

Note.—This act conflicts with Act of U. S. Congress of August 9, 1888 (25 Stat. L., 392).

## DOMESTIC RELATIONS.

### *Marriage.*

SECTION I. Be it enacted by the general council of the Choctaw Nation assembled: *Every male who shall have arrived at the full age of eighteen years, and every female who shall have arrived at the full age of sixteen years, shall be capable in law of contracting marriage, provided no other legal prohibition exists. But if under these ages their marriage shall be void, unless free consent by the parents*



and relations or guardian have been first obtained. Whoever shall contract marriage in fact, contrary to the prohibition of this section; and whoever shall knowingly solemnize the same, shall be both deemed guilty, one or both, of high misdemeanor, and shall upon conviction thereof, be fined or imprisoned at the discretion of the court. It shall be lawful for all the judges of this Nation and preachers of the gospel to solemnize the rites of matrimony and issue certificates thereof, if requested, and be allowed and receive for every such service two dollars, to be paid by the parties so joined together. All marriages which are prohibited by law, *on account of consanguinity between the parties*, or on account of either of them having a former husband or wife then living, shall, if solemnized within this Nation, be absolutely void, without any decree of divorce, or other legal proceedings.—(Laws of the Choctaw Nation, p. 233.)

Approved Oct. 30, 1882.

Page 243. Ibid.

Section 1, Act of Oct. 30, provides for the organization of three companies of militia, subordinate officers and members of which to be selected by the captains, which captains are to be appointed by the principal chief out of "*those Choctaw citizens* of their respective districts between the ages of eighteen and fifty years." It is a matter of general knowledge that a large number of these mixed bloods were members of this militia.

Note.—This Statute not referred to in Departmental decisions. The Act of the Choctaw Council of March 16, 1858, is, however, referred to. That act prohibited "cohabitation" with a negro. The Secretary of the Interior in his communication to the President gives the date of this as Oct. 30, 1888.

## LAWS.

*Intermarriage Between Choctaws and Negroes.*

SECTION 8. Be it enacted by the general council of the Choctaw Nation assembled: It shall not be lawful for a Choctaw and a negro to marry; and if a Choctaw man or Choctaw woman should marry a negro man or negro woman he or she shall be deemed guilty of a felony, and shall be proceeded against in the circuit court of the Choctaw Nation having jurisdiction the same as all other felonies are proceeded against; and if proven guilty shall receive fifty lashes on the bare back. (Page 206.)

Note.—No date of enactment given. Marked in blue pencil "Repealed, P. 225." This enactment plainly inconsistent with Act of Oct. 30, 1888, and Act of Oct. 30, 1882.

In the preface to the constitution and laws of the Choctaw Nation appealed for A. R. Durant, Mr. Durant says:

"The Choctaws have for many years urgently demanded that the laws of the Nation be printed in both English and Choctaw, then each language bound in one volume  
\* \* \*"

"We find some laws in the Code compiled by Hon. J. P. Folsom, 1869, not embraced in the Code compiled by Hon. J. H. Standley, and as they have never been repealed, we thought best to give them a place in this volume and leave the question of validity to be decided by the proper tribunal."

Note by Cantwell:

This act we do not regard as of any consequence and bears, we think, no relation to the rights of children to citizenship. It is referred to in the Departmental decisions as an Act passed in 1858, prohibiting cohabitation with negroes. The original Act of 1858, was originally printed only in the

Choctaw language. It is possible that the prohibited act was an act intended to prevent illicit cohabitation with a negro—illicit intercourse with slaves. The translation and insertion as an Act of 1888, in view of the statement of the compiler of these laws as above, and the additional fact that no date of enactment is given, warrants suspicion of the authenticity of the act.

As Assistant Attorney-General Campbell points out, it imposes no bar to citizenship upon the issue and would not apply to mulattoes, quadroons, or mestizos.

From CONSTITUTION AND LAWS OF THE CHOCTAW NATION, together with the TREATIES of 1837, 1855, 1865 and 1866. Worley, Printer, 1894.

## LAWS OF THE CHOCTAW NATION.

### BILL III.

#### AN ACT ENTITLED AN ACT DEFINING THE QUANTITY OF BLOOD NECESSARY FOR CITIZENSHIP.

Note.—*By formal adoption.*

P. 266.

SECTION 1. Be it enacted by the general council of the Choctaw Nation assembled: That hereafter all persons non-citizens of the Choctaw Nation, making or presenting to the general council petitions for rights of Choctaws in this nation shall be required to have one-eighth Choctaw blood and shall be required to prove the same by competent testimony.

SECTION 2. Be it enacted that all applicants for rights in this Nation shall prove their mixture of blood to be white and Indian.

SECTION 3. Be it further enacted that no persons convicted of any felony or high crime shall be admitted to the rights of citizenship within this Nation.

SECTION 4. Be it further enacted that this act shall not be construed to affect persons within the limits of the Choctaw Nation now enjoying the rights of citizenship.

SECTION 5. Be it further enacted that this act take effect and be in force from and after its passage.

Note.—The above appears under Acts of 1886, but no date given of its passage.

This only applies to petitions for rights of adoption to be granted by the general council and has no relevancy whatever to the acquisition of citizenship by marriage.

## AN ACT REQUIRING THE MANNER OF APPLICATION OF CITIZENSHIP.

### BILL XL.

Be it enacted by the general council of the Choctaw Nation assembled: That hereafter all claimants for citizenship in the Choctaw Nation shall pay to the national treasury the sum of one hundred dollars for each person asked TO BE ADOPTED, and that no petition shall be entertained by the committee for citizenship unless accompanied by the national treasurer's receipt as above required, and that this act shall take effect and be in force from and after its passage.—(Laws of the Choctaw Nation, p. 285.)

Approved November 6, 1888.

AN ACT RELATING TO CITIZENS OF THE CHOCTAW NATION TAKING THE OATH OF ALLEGIANCE TO THE UNITED STATES.

BILL LVII.

Be it enacted by the general council of the Choctaw Nation assembled: That any member of the Choctaw tribe of Indians, either by blood, *adoption* or by marriage into said tribe and subject to the government of the Choctaw Nation, who has taken the oath of allegiance to the government of the United States, shall be disqualified to hold any office of trust or profit in the Choctaw Nation and to vote at any election in said Nation, and to be impaneled as a juror in any court under the government of said Choctaw Nation.

This act shall take effect from and after its passage.—  
(Laws of the Choctaw Nation, p. 297.)

Approved October 25, 1890.

THE ACT OF MAY 21, 1883.

(Laws of Choctaw Nation, pp. 335-336.)

SEC. 1. Be it enacted by the general council of the Choctaw Nation assembled: That all persons of African descent, *resident* in the Choctaw Nation *at the date of the treaty of Fort Smith, Sept. 13, 1865*, and their descendants formerly held *in slavery by Choctaws or Chickasaws*, are hereby declared to be entitled to, and invested with all the rights of suffrage, of citizens of the Choctaw Nation, except in the annuity moneys and the public domain of the Nation.

SEC. 2. Be it further enacted that all *said* persons of African descent, as aforesaid and their descendants, shall be allowed the same right of process, civil and criminal, in the several courts of this Nation, as are allowed to Choctaws, and full protection of persons and property is hereby granted to all such persons.

SEC. 3. Be it further enacted: That all *said* persons are hereby declared to be entitled to forty acres each of the lands of the Nation to be selected and held upon the same terms as the Choctaws.

SEC. 4. Be it further enacted that *all said persons* aforesaid are hereby declared to be entitled to equal educational privileges and facilities with Choctaws so far as neighborhood schools are concerned.

SEC. 5. Be it further enacted that *all said* persons that shall elect to remove and do actually and permanently remove from the Nation, are hereby declared to be entitled to one hundred dollars per capita, as provided in said third article of the Treaty of 1866.

SEC. 6. Be it further enacted: That *all said persons* who shall decline to become citizens of the Choctaw Nation and who do not elect to remove permanently from the Nation, are hereby declared to be intruders on the same footing as other citizens of the United States resident herein and subject to removal for similar causes.

SEC. 7. Be it further enacted that intermarriage with *such freedmen* of African descent who were formerly held as slaves of the Choctaws and have become citizens shall not confer any rights of citizenship in this Nation and all *free men* who have married or may hereafter marry *freedwomen* who have become citizens of the Choctaw Nation, are subject to the permit laws, and allowed to remain during good behavior only.

SEC. 8. Be it further enacted: That *all such persons* of

African descent, who *have* become citizens of the Choctaw Nation shall be entitled to hold any office of trust or profit in this Nation, except the offices of principal chief and district chief.

SEC. 9. Be it further enacted: That the National Secretary shall furnish a certified copy of this act to the Secretary of the Interior. And this act shall take effect and be in force from and after its passage.

Approved May 21, 1883.

Note.—This act establishes beyond controversy:

1st. That the Choctaws correctly construed the agreement in the Treaty of 1866, and that the word "Freedman" applied only to the former slaves who were resident in the Nation at the date of the Treaty of Fort Smith, Sept. 13, 1865, and to those descendants of such slaves residents who had *themselves also been held in slavery*, wherever they were resident.

2nd. The payment of \$100 each was made to 105 persons, former slaves, who elected to remove from the Choctaw country (page 6 Senate Document No. 505, 60th Congress, 1st Session.)

3rd. That all of the *former slaves* who remained were entitled to 40 acres each and full rights of suffrage and either elected to accept or thereafter become intruders unless they had, otherwise than by the Treaty provision, that is *by intermarriage*, become entitled to full citizenship, 8534 remained and became citizens. See Senate Doc. 505, 60th Congress, 1st Session.

4th. That no provision was made by this act for the free born, that is the children born between 1865 and 1883, and it was assumed that they were subject to none of the disabilities imposed upon those who had once been held in slavery.

5th. That Section 7 of the above act recognizes that many of the freedmen and freedwomen had acquired full rights as citizens by intermarriage with Indians and that Section 7 was enacted to prevent them, in event of the death of their Indian spouse from conferring citizenship by marriage on a second spouse, who was not a citizen. The effect of this was that the freedwoman who had acquired full citizenship by marriage, upon the death of her Indian spouse could not herself confer citizenship upon a non-citizen by remarriage.

6th. Section 8 of the above act expressly recognizes that membership had, prior to this act, been acquired by former slaves by marriage and these were made eligible to hold any office except Principal Chief or District Chief.

In the light of the above act how trivial seem the petty quibbles of the academicians about the penal laws of the Choctaws passed in 1858, prohibiting cohabitation with a negro!

## CHIKASAW CONSTITUTION OF AUGUST 16, 1867.

The following provisions appear in the Constitution adopted by the Convention at Camp Harris August 16, 1867, which it is to be noted was adopted *after the Treaty of 1866*, and *after the emancipation of the slaves*. This Constitution is in marked contrast to the Constitution of the Chickasaw Nation of 1856. The following provisions appear in the book now in the Congressional Library, the title page of which is

### “CONSTITUTION, LAWS AND TREATIES of the CHICKASAWS



By authority.

Sedalia, Missouri.

Sedalia Democrat Company, Printers.

1878."

## ARTICLE I.

### *Bill of Rights.*

"SECTION 2. All freemen, when they form a social compact have equal rights, and no man or set of men is entitled to exclusive, separate, public emoluments, or privileges, but in consideration of public services. (Page 4, Ibid.)

## ARTICLE II.

SECTION 3. All *free* male persons of the age of nineteen years and upwards, who are by BIRTH or ADOPTION, members of the Chickasaw tribe of Indians and not otherwise disqualified, and who shall have resided six months immediately preceding any election in the Chickasaw Nation, shall be deemed qualified electors, under the authority of this Constitution. (Page 5, Ibid.)

## ARTICLE V.

SEC. 3. No person shall be eligible to the office of Governor unless he shall have attained the age of thirty years and shall have been a resident of the Nation for one year next preceding his election. Neither shall any person, except a Chickasaw by birth, or an adopted member of the tribe, at the time of the adoption of this Constitution be eligible to the office of Governor. (Page 9, Ibid.)

SECTION 7. (General Provisions.) ALL PERSONS, OTHER THAN CHICKASAWS, who have become citi-

zens of this Nation, by MARRIAGE or adoption and have been confirmed in all their rights as such, by former conventions, and all such persons as aforesaid, who have become citizens by adoption by the Legislature, or by intermarriage with the Chickasaws, since the adoption of the Constitution of August 18, A. D. 1856, shall be entitled to all the rights, privileges and immunities of native citizens. ALL WHO MAY HEREAFTER BECOME CITIZENS, EITHER BY MARRIAGE OR ADOPTION, SHALL BE ENTITLED TO ALL THE PRIVILEGES OF NATIVE BORN CITIZENS, *Without* being eligible to the office of Governor. (Pages 15-16, Ibid.)

SECTION 10. (General Provisions.) The Legislature shall have power, by law, to *admit or adopt* as citizens of this Nation, such *persons* as may be acceptable to the people at large." (Page 16, Ibid.)

Here note, that the Treaty of July 2, 1866, after providing that the Choctaws and Chickasaws should thereafter change their lands from a holding in common to a holding in severalty and providing for individual selections of lands expressly provides, by Article 26:

"The right here given to Choctaws and Chickasaws respectively, shall extend to all persons who have become citizens by adoption or INTERMARRIAGE of either of said Nations, *or who may hereafter become such.*"

(From Chickasaw Laws, Sedalia Democrat, G. P. note 1878.)

## AN ACT TO RECORD MARRIAGES, ETC.

SECTION 1. Be it enacted by the Legislature of the Chickasaw Nation, That from and after the passage of this act, all persons marrying in this Nation shall have the same

recorded in the clerk's office of the county court in the county in which they may reside.

SECTION 2. Be it further enacted, That all persons neglecting to record their marriages within one month from the time they are married, shall be fined in a sum not less than five, nor exceeding ten dollars, at the discretion of the court having jurisdiction of the same.

SECTION 3. Be it further enacted that all fines imposed under this act shall be collected by the sheriff or constable by order of the county court, in the county in which such violation may have occurred.

SECTION 4. Be it further enacted, That all marriages in this Nation shall be solemnized by any judge or ordained preacher of the gospel; for every couple joined together in the bonds of matrimony, the person pronouncing the ceremony shall, for every such service, receive the sum of one dollar from the persons joined together.

SECTION 5. Be it further enacted, That all persons who are living together out of wedlock shall be compelled by the county judge to be lawfully joined together in the bonds of matrimony; and any person refusing to be lawfully joined together shall be compelled to pay a fine of not less than twenty-five, nor exceeding fifty dollars.

SECTION 6. Be it further enacted that the county judge shall cause all fines imposed under the above act to be collected by the treasury, for county purposes."—(Approved October 12, 1876. Pages 63-64, *Ibid.*)

## AN ACT TO LEGALIZE MARRIAGES SOLEMNIZED BY LICENSED PREACHERS.

### PREAMBLE.

Whereas, It is enacted in section 4, of the "Act to record

marriages," that any judge of the Chickasaw Nation, or any ordained preacher of the gospel, shall have the power to perform the marriage ceremony.

And whereas, Many of our citizens have been united in the bonds of matrimony by preachers not ordained, nor authorized to marry individuals by the regulations of the church of which such preachers belong;

And whereas, The District Court of the Chickasaw Nation, in the county of Pontotoc, at the January term, did decide that all such marriages were unauthorized by the church to which said preachers belong, and consequently both canonically and legally void;

And whereas, The persons so marrying, as well as the licensed preachers performing the ceremony, did the same in good faith and without any doubt whatever of the lawfulness of it;

And whereas, By the decision in question, the parties living together are not husband and wife, nor the children of such marriage legitimate, therefore,

SECTION 1. Be it enacted by the Legislature of the Chickasaw Nation, That every marriage which has been solemnized by any unordained licensed preacher, within the limits of the Chickasaw Nation, before the passage of this act, is hereby legalized, and every child born in marriage, the offspring of it, is hereby declared to be legitimate, and shall be entitled to all the rights, privileges and immunities thereof, just the same as if the marriage ceremony had had been performed by any lawful judge of this Nation, or any ordained preacher of the gospel, as contemplated in the fourth section specified in the preamble of this act.

SECTION 2. Be it further enacted, That all marriages which may hereafter be solemnized by licensed preachers shall be lawful, just the same as if the ceremony was performed by an ordained minister of the gospel, or judge of

this Nation; and this act shall be in force from and after its passage. Approved Oct. 12, 1876.—(Laws of the Chickasaw Nation, pp. 64-65.)

#### AN ACT IN RELATION TO DIVORCES.

SECTION 4. Be it further enacted, That a divorce from the bonds of matrimony shall not in anywise affect *the legitimacy of the children thereof*, and it shall be lawful for either party after the dissolution of the marriage, to marry again. Approved October 12th, 1876.—(Laws of the Chickasaw Nation) page 68.

#### AN ACT TO REPEAL THE OLD CHOCTAW LAWS.

SECTION 1. Be it enacted by the Legislature of the Chickasaw Nation, That all laws and parts of laws which passed the Choctaw Council prior to the adoption of the Constitution of the Chickasaw Nation, are hereby declared null and void within the limits of the Chickasaw Nation, except such laws or parts of laws, as may govern any judicial proceedings commenced prior to the adoption of said Constitution, as is provided for in the 4th Article of a treaty made and concluded at Washington City, between the United States and the Choctaws and Chickasaws. Approved October 12th, 1876.—(Laws of the Chickasaw Nation) page 70.

#### AN ACT ORGANIZING MILITIA IN THE CHICKASAW NATION.

SECTION 1. Be it enacted by the Legislature of the Chickasaw Nation That from and after the passage of this act,

all *male persons, members of the Chickasaw Nation, or tribe* who are *citizens by birth or adoption*, and of able bodies and sound mind, over the age of eighteen and under thirty years of age, except scholars attending school, shall be deemed eligible for militia duty. Approved Oct 9, 1876.—(Laws of the Chickasaw Nation) page 82.

## AN ACT IN RELATION TO MARRIAGE UNDER CHOCTAW LAW.

SECTION 1. Be it enacted by the Legislature of the Chickasaw Nation, That from and after the passage of this act, all persons that were married under the Choctaw law, or by mutual consent of parties who lived together as man or wife six months previous to the adoption of the Constitution of the Chickasaw Nation, dated August 30th, 1856, shall be compelled by the county judge to have the same established upon oath, and recorded in the office of the county clerk.

SECTION 2. Be it further enacted, That it shall be the duty of the county judges to notify the people of their respective counties of the passage of this act; any person or persons who refuse or neglect to have their marriage recorded within three months after the passage of this act, shall be compelled to pay a fine not less than five, nor exceeding fifteen dollars, at the discretion of the court.

SECTION 3. Be it further enacted, That all fines imposed under this act shall be collected by the sheriff or constable and be placed in the county treasury. Approved Oct. 17th, 1876.—(Laws of the Chickasaw Nation) page 96.

## RESOLUTIONS IN RELATION TO THE FREED-

MEN AND THEIR DESCENDANTS IN THE  
CHOCTAW AND CHICKASAW NATIONS.

Whereas, The Governor of the Chickasaw Nation, has recommended to this Legislature that commissioners be sent on the part of the Chickasaw Nation, to confer with commissioners on the part of the Choctaw Nation, in relation to the Freedmen in said Nations, and to agree with the Choctaws upon some plan for the final settlement of all questions relating to said Freedmen.

And whereas, It is understood that the Governor is in favor of the removal of all Freedmen, former slaves of the Choctaws and Chickasaws, from the limits of the Choctaw and Chickasaw country, is of the opinion that the same may be accomplished, therefore

SECTION 1. Be it resolved by the Legislature of the Chickasaw Nation, That four commissioners, one from each county of the Chickasaw Nation, shall be elected by joint vote of the Senate and House of Representatives of the present session of the Legislature, to visit the capital of the Choctaw Nation, during the next regular session of the general council of said Nation, with instructions to confer with commissioners on the part of the Choctaw Nation, and agree upon some plan, whereby the Freedmen, *former slaves of the Choctaws and Chickasaws*, and their descendants, shall be removed from and kept out of the limits of the Choctaw and Chickasaw country.

SECTION 2. Be it further resolved, That the commissioners provided for in the foregoing section shall receive the same pay, while actually engaged in the business of their mission, as members of the Legislature, and may appoint a secretary who shall receive the same pay as one of the commissioners; and said commissioners shall make a full report of all their official proceedings to the Legislature,

at the next meeting thereof. *Approved Oct. 18th 1876.*—  
(Laws of the Chickasaw Nation) pp. 148-149.

✓ AN ACT TO REPEAL AN ACT IN RELATION TO  
INTERMARRIAGE OF CITIZENS OF THE  
UNITED STATES AND MEMBERS OF THE  
CHICKASAW TRIBE OR NATION OF INDIANS,  
APPROVED SEPTEMBER 20, 1872, AND FOR  
OTHER PURPOSES.

SECTION 1. Be it enacted by the Legislature of the Chickasaw Nation, That an act approved September 20, 1872, forbidding marriages between citizens of the United States and members of the Chickasaw Tribe or Nation of Indians, unless such citizen of the United States shall have resided within said Nation two years preceding such marriage, under a permit from the Chickasaw authorities be and the same is hereby repealed.

✓ SECTION 2. Be it further enacted, That no marriage between a citizen of the United States and a member of the Chickasaw Tribe or Nation of Indians, shall take place or be solemnized within the Chickasaw Nation, unless a license shall have been first obtained from the county judge of the county where at least one of the parties to such marriage shall reside; and no judge of the county court shall issue such license except upon the payment of a license fee of one dollar and fifty cents, and upon satisfactory proof before him that such citizen of the United States is a person of good moral character and industrious habits, and that such member of the Chickasaw Nation is competent to contract marriage, or has the consent of his or her parents or guardian to marry such citizen of the United States; and hereafter no marriage between a citizen of the United



States and a member of the Chickasaw Nation shall confer any right of citizenship, or any right to improve or select lands within the Chickasaw Nation unless such marriage shall have been solemnized in accordance with the laws of the Chickasaw Nation; and all marriages between *citizens of the United States* and members of the Chickasaw Nation shall be duly certified, by the officer or minister of the gospel who shall have performed the marriage ceremony, to the clerk of the county court of the county where such marriage took place, who shall record the same; and every such officer or minister of the gospel (if a citizen of the Chickasaw Nation) who shall marry a citizen of the United States to a member of the Chickasaw Nation without such license, shall be subject to a fine of fifty dollars, to be imposed by the county court and collected as other fines, for county purposes; and if such minister be a citizen of the United States, he shall be removed from the Nation.

SECTION 3. Be it further enacted, That no marriage heretofore solemnized, or which may hereafter be solemnized, between a citizen of the United States and a member of the Chickasaw Nation, shall enable SUCH *citizen of the United States* to confer any right or privilege whatever, in this Nation, by *again marrying another citizen of the United States*, or upon *such other* citizen of the United States or *their* issue, and in case any citizen of the United States shall have married a member of the Chickasaw Nation, and shall have heretofore abandoned her, or should hereafter voluntarily abandon or separate from such member of the Chickasaw Nation, such citizen of the United States shall forfeit all right acquired by such marriage in this Nation, and shall be liable to removal as an intruder, from the limits thereof.

SECTION 4. Be it further enacted, That this Act shall not be construed so as to interfere with marriages solemnized

prior to the treaty of 1866; and that it take effect and be in force from and after its passage. Approved October 19th, 1876.—(Laws of the Chickasaw Nation) pages 152-3-4.

LAWS OF THE CHICKASAW NATION. 1878.  
REFUGEE BILL.

Page 103.—Sec. 1.

✓ Be it enacted by the Legislature of the Chickasaw Nation, That the Governor be and he is hereby authorized and requested to issue forthwith a "General Order" requiring all intruders, refugees and negroes, not embraced within the meaning of the "treaty of April, 1866," to forthwith leave the Chickasaw Nation, and forever stay out of the same, or procure, by a recommendation of good citizens, a permit to remain within the Nation; and the Governor is hereby requested to use discretion and caution in giving said permits, in order that only persons of good moral character, and those who will respect all the laws of the Chickasaw Nation, can procure said permits. Approved, October 17th, 1876.

AN ACT CONFIRMING THE TREATY OF 1866.

Pages 103-104.—Sec. 1, Act of 1877.

Be it enacted by the Legislature of the Chickasaw Nation, That whereas, a treaty was concluded at Washington City on the 28th of April, 1866, by commissioners duly appointed on the part of the Chickasaws and Choctaws, and the United States Government, which treaty was ratified with amendments by the United States Senate, and confirmed by the President, the Chickasaw Legislature does hereby give

its assent, and confirm the said treaty and amendments made by the Senate of the United States.

Pages 103-104. Sec. 2.

Be it further enacted, That the Chickasaw Legislation ✓ does hereby give its assent to the sectionizing and allotment of the lands in severalty, under the system of the United States, as provided for in the treaty of April, 1866, and the President of the United States is hereby requested to cause the same to be done as soon as may be practicable.

Sec. 3.

Be it further enacted, That the provisions contained in Article 3rd of the said treaty, giving the Chickasaw Legislature the choice of receiving and appropriating the three hundred thousand dollars therein named, for the use and benefit, or passing such laws, rules and regulations as will give all persons of African descent certain rights and privileges, be and it is hereby declared to be the unanimous consent of the Chickasaw Legislature, that the United States shall keep and hold said sum of three hundred thousand dollars for the benefit of the said negroes; and the Governor of the Chickasaw Nation is hereby requested to notify the Government of the United States that it is the wish of the Legislature of the Chickasaw Nation that the Government of the United States remove the said negroes beyond the limits of the Chickasaw Nation, according to the requirements of the 3d article of the Treaty of April 28th, 1866. Approved October 17th, 1877.—(Laws of the Chickasaw Nation) pages 103-104.

The act of 1873 adopting the Chickasaw Freedmen does not appear in the Revised.

LAWS OF THE CHICKASAW NATION,  
1878.

AN ACT CREATING A CONVENTION TO CHANGE  
THE CONSTITUTION AND AMEND THE LAWS.

ACT OF OCT. 17, 1877.

SECTION 1. Be it enacted by the Legislature of the Chickasaw Nation, That from and after the passage of this act, the Governor of the Chickasaw Nation shall appoint five men suitable for the purpose of amending the present Constitution and Laws, one man from each county, and a floater for the Nation; said floater to be chairman of the convention.

SECTION 2. Be it further enacted, That the members of said convention shall have power to change or amend said Constitution, as they may consider necessary for the better government and general welfare of the citizens of the Chickasaw Nation, and conformable with the treaty stipulations of 1855 and 1866, between the United States of America and the Chickasaws.

SECTION 3. Be it further enacted, That the said members of the convention shall have power to change or reject any or all existing laws, contrary to said treaties and to the Constitution which they are authorized to make or amend.

SECTION 4. Be it further enacted, That the said new Constitution and amended laws shall be submitted to the people of the Chickasaw Nation, for their approval or rejection, by general ballot, at the most convenient time, to be specified in a proclamation of the Governor's to the people of the Chickasaw Nation.

SECTION 5. Be it further enacted, That the Governor

shall have the said Constitution and Laws printed and distributed to the people, previous to their submission to the people for their approval or rejection.

SECTION 6. Be it further enacted, That if the said new Constitution and amended laws are adopted by the people of this Nation, the said Constitution and Laws shall be the Constitution and Laws of the Chickasaw Nation; but if the said Constitution and Laws should be rejected by the people, then the convention shall change or make them agreeable to the expressed wishes of the people.

SECTION 7. Be it further enacted, That the members of the convention shall select their own place of meeting, governed by the will of the majority, and each member of the convention shall receive for his services, during the time occupied in the same, five dollars per day.

SECTION 8. Be it further enacted, That the Governor is hereby authorized to draw five hundred dollars out of the Treasury of the Chickasaw Nation to pay for the translation, printing and distribution of the said Constitution and Laws.

SECTION 9. Be it further enacted, That the decision of the people in relation to the adoption or rejection of the said new Constitution and amended laws, shall be sent to the office of the National Secretary, like other election returns by the judges of elections of the different counties, and the result (of said elections) shall be made known to the Governor, who shall, in a proclamation, transmit the information to the people.

SECTION 10. Be it further enacted, That the Governor be and he is hereby empowered to appoint one or more members of the convention to superintend the printing and correction of the same, as the Governor may direct.—  
(Laws of the Chickasaw Nation, pp. 104-105.)

Approved Oct. 17, 1877.

(Note.—There is no evidence in the volume of any adoption, by the people, of any new or amended Constitution.)

FROM CONSTITUTION, TREATIES AND LAWS  
OF THE CHICKASAW NATION.

Made and Enacted by the Chickasaw Legislature.  
1890.

AN ACT REJECTING THE ADOPTION OF THE  
FREEDMEN IN THE CHICKASAW NATION.

ACT OF OCT. 22, 1885.

✓ Whereas, The 3d article of the Treaty of 1866, between the United States and the Choctaw and Chickasaw Nations stipulates that the territory lying west of the 98th degree of west longitude, known as the Leased District, be ceded to the United States Government for (\$300,000.00) the consideration of three hundred thousand dollars, which sum shall be held in trust by the United States for said Nations, at a certain rate of interest, until each respective Nation elects within two years after the ratification of said Treaty, to make certain laws, rules and regulations giving the Freedmen once held as slaves by said Nation, the rights, privileges and immunities of citizens of said Nations, except in their annuities and public domain, etc.

And Whereas, It provides further, that if said laws, rules and regulations are not made within two years by said Nations from the ratification of aforesaid treaty, then the United States Government promises to remove within 90 days from the expiration of the two years of said Freedmen as are willing to remove from said Nations, using the aforesaid three hundred thousand dollars for the

use and benefit of said Freedmen in their removal, etc., and those choosing to remain or who might return after removing to receive no part or benefit from the said three hundred thousand dollars, and shall be upon the same footing as other citizens of the United States ;

And Whereas, The United States has failed to remove said Freedmen agreeable to the stipulations of said treaty and left them here among us for a long time, recognized by us as occupying the same status as other United States citizens.

And Whereas, The Chickasaw people in justice to their posterity have not made said laws, rules and regulations as provided for in the aforesaid article of said treaty for the following reasons, to wit :

1st. That the Chickasaw people can not see any reason or just cause why they should be required to do more for their freed slaves than the white people have done in the slave holding States for theirs.

2d. That it was by the example and teaching of the white man that we purchased, at enormous prices, their slaves and used their labor, and were forced by the result of their war to liberate our slaves at a great loss and sacrifice on our part, and we do not hold or consider our Nation responsible in nowise for their present situation, Therefore,

SECTION 1. Be it enacted by the Legislature of the Chickasaw Nation, That the Chickasaw people hereby refuse to accept or adopt the Freedmen as citizens of the Chickasaw Nation upon any terms or conditions whatever, and respectfully request the Governor of our Nation to notify the Department at Washington of the action of the Legislature in the premises.

SECTION 2. Be it further enacted, That the Governor is hereby authorized and directed to appoint two competent

and discreet men, of good judgment and business qualifications to visit Washington City, D. C., during the next session of Congress and memorialize that body to provide a means for removal of the Freedmen from the Chickasaw Nation to the country known as Ok-la-ho-ma in the Indian Territory, or to make some suitable disposition of the Freedmen question so that they may not be forced upon us as equal citizens of the Chickasaw Nation.

SECTION 3. Be it further enacted, That the Delegation is further authorized to apply to the Indian Department in Washington for an investigation and settlement of the Orphan, Incompetent, Misapplied and other claims of the Chickasaws against the United States Government, and any and all funds paid on account of said claims, shall be received and receipted for the same as other monies coming into the Treasurer's hands from the United States Government.

SECTION 4. Be it further enacted, That the Delegation is also authorized to represent the Chickasaws in any and all measures that might be presented or come before any branch of Congress, or the Indian Department, whereby the interest of our country and people may be involved, and use prudence and discretion in their deliberations upon such matters, and report the result of their mission at the next Legislature.

SECTION 5. Be it further enacted, That for each delegate the sum of fifteen hundred dollars (\$1,500) be and the same is hereby appropriated out of any monies in the Treasury not otherwise appropriated, as a full compensation for their services on this mission; and the Auditor is hereby authorized to issue a warrant for the same; and this Act take effect from and after its passage.—(Laws of the Chickasaw Nation, pp. 171-172-173.)

Approved October 22, 1885.



Note:—Fleming v. McCurtain, decided November 8, 1909. 215 U. S., 56.

(This case referred to in communication of Secretary of Interior to President.)

This was a bill in equity brought by persons in the same class as the claimants against the Secretary of the Interior, McCurtain, chief of the Choctaws and others, on the theory that the plaintiffs had a vested right to allotments. The opinion states:

“The Circuit Court examined the treaty and conveyance under which the plaintiffs claim, and held that they did not confer the rights alleged in the bill; that the right to share in the distribution depended on membership in one of the two tribes, except in the case of freedmen, specially provided for; *that who were members of the respective tribes and entitled to enrollment as such was a matter for Congress to determine*; that Congress had adopted certain rolls when finally approved by the Secretary of the Interior; that the Secretary had acted and the plaintiffs had been excluded; that his action was final, and that the court had no jurisdiction in the case. The demurrer to the jurisdiction was sustained, the bill was denied, and the plaintiffs appealed to this court.”

The Supreme Court affirmed the decision below and there is nothing in the opinion which can leave anyone to infer that *had the plaintiffs been the full blood Indians of the Choctaw-Chickasaw tribe who had been denied enrollment*, the result would have been any different.

This decision does not in any particular change the repeated rulings of the United States Supreme Court that the grant of lands as a tribe or a nation is a grant of the usufruct or right of occupancy, subject to the rights of the United States as Lord Paramount, that no individual has a vested right therein and that when the nation or tribe is dis-

solved and the property formerly held as communal property is to be distributed, that Congress has the supreme power to determine the distribution, and if Congress determines to distribute among the individual members of the former tribe, Congress alone has power to determine who are and who are not members of the tribe.

The plaintiffs based their contention that a trust was created by the use of the word "descendants" in the Treaty of 1830. The court held that no trust was created, and the opinion appears to intimate that the Treaty of 1866 and not the Treaty of 1830, was the only limitation, if any, upon the power of Congress to distribute this property as it saw fit.

NOTES ON THE CASE OF THE UNITED STATES  
AGAINST CHOCTAW NATION ET AL., DECIDED  
IN THE COURT OF CLAIMS, 38 C. C. Rpts., 558, on  
April 27, 1903, but the Supplementary Decree in which  
has only lately been rendered.

I call the attention of the committee particularly to the above decision, which is the result of the reference to the Court of Claims of the controversy over the Chickasaw Freedmen, which reference was made by Act of July, 1902.

The decision of the Court of Claims is particularly confined to the individuals who had been held in slavery, and yet by reason of the erroneous use of the word "freedmen" the attorneys for the Chickasaw tribe by treating the freedmen roll as a roll of former slaves have succeeded in getting a supplementary judgment against the United States, January, 1910, for \$606,936.08. A motion to modify this decree is now pending, but if Congress does not, at this session, remedy the erroneous legislation of 1902, not only the

rights of the free-born children will be destroyed, but the United States will actually be *robbed*, for there is no other name for it, even though done under the forms of law, of \$606,936.08.















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